



NEWSLETTER JULY/AUGUST/SEPTEMBER 2007

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EDITORIAL

Dear reader,

This edition of our newsletter contains a report on the decision of the German Constitutional Court to reject a legal action against a deployment of the German Armed Forces in Afghanistan. In doing so, the Court offered an interesting analysis on the scope of the NATO Treaty. Furthermore, this newsletter offers *inter alia* a comprehensive review of new Irish and Swiss legislation in the field of military law.

The variety of authors offering so many valuable contributions of common interest to the Society's members undoubtedly mirrors the growing success of our newsletter. I wish to thank the authors and invite all members to join this interactive effort, in support of our Society's objectives.

Ludwig Van Der Veken
Secretary-General

NEWS, ANNOUNCEMENTS OF CONFERENCES, SEMINARS, ETC.

The Society wishes to inform its members that it has decided to use the **PayPal** online payment system, accepted in 190 countries and regions worldwide and which supports 16 different currencies. It allows anyone who has an Internet access to send, receive, hold funds or transfer money from his bank account to another one through the Internet, requiring only an e-mail address and a credit card (Visa, MasterCard, American Express, Discover) and there is no need to share one's financial information in every transaction. The payments are then simple, quick and safe. Besides, contrary to the usual transfers of money, the exchange commission is paid not by the person who sends the money but by the one who will receive the transfer. This process thus will permit members of the Society, mainly those outside Europe, to make transfers of money at a lower cost to the account of the Society. See <https://www.PayPal.com>

(The General Secretariat)

On the occasion of its 140th anniversary, and marking 30 years since the adoption of Additional Protocols I and II, the Netherlands Red Cross has announced a **conference on "Protecting Human Dignity in Armed Conflict"**, to be held in the Peace Palace in The Hague on 19 October 2007. The registration form and more details are available at www.rodekruis.nl/conference.

LTC Marc Philippe (Canada) has accepted the post of **President of the Society's Committee for International Humanitarian Law**. The Managing Board of the Society expressed its gratitude to LTC Sylvain Fournier (Canada) for his work as previous president of this committee.

Tunisia has accepted to host the **Society's 2009 Congress** on 'Practice and Customary Law in Military Operations, including Peace Support Operations'. All members will receive their invitation in due time. The preparatory questionnaire in relation to the plenary session of the Congress is currently finalised and will thereafter be sent to Ministers of Defence and to the Society's National Groups.

The Belgian National Group of the Society is organising an international **conference in Brussels on 'the Militarisation of Outer Space: Policy and Legal Aspects'**, in cooperation with various other partners, including the Interdisciplinary Centre for Space Studies and the Belgian Royal Military School. Members of the Society will receive an invitation by e-mail including a registration form. Registration of participants will only be possible after the distribution of the registration forms.

(Alfons Vanheusden, Assistant Secretary-General)

On 10 December 2007, the Forum for International Criminal Justice and Conflict, in conjunction with the International Peace and Research Institute, Oslo, shall be holding a **seminar on national military manuals and the law of armed conflict**. In the main the seminar shall address the following questions: Where within the broad legal, institutional and normative framework of the armed forces – e.g., domestic law including criminal law, military justice, operational doctrine, rules of engagement and battlefield ethics – does a military manual fall? What are the functions and status of military manuals under the law of armed conflict? How are the intended beneficiaries of military manuals trained on them? Have military manuals been effective in doing what they are intended to do? What role have they played in peace operations? How should military manuals deal with the fluid realities of warfare? In what way would related fields of international law, such as international human rights law and international criminal law, be incorporated into military manuals? Is a military manual really necessary for a state which does not have one yet? Might there be a 'Nordic military manual'? The President of the Society, Arne Willy Dahl, and the Honorary President of the Society, Dieter Fleck, shall present papers during the seminar. Further information on the seminar can be found at: <http://new.prio.no/FICJC/Activities/National-military-manuals-on-the-law-of-armed-conflict/>.

(LTC Frank Adaka, intern)

First report on the theme of the Committee for General Affairs for the next Congress in 2009: the rule of law in failing states – a basis for Human Rights

Understanding the theme:

1 - The rule of law and a failing state are a contradiction in itself. By definition a failing state cannot have the rule of law by its own. Nevertheless first of all a failing state needs the rule of law after it got a minimum of peace.

A society dealing with the law of the military should deal with the law of the surroundings of the military – and by this it is very quickly in the middle of the problems of failing states and of states that have seriously failed.

Failing states and states that have seriously failed are exactly the scenario in which military are currently sent in, be it peacekeeping, peace enforcement or fighting a political system mistreating fundamental Human Rights and killing its own population.¹ After entering the country by military forces and at least after the fighting is over there is a strong need for law and order, but no laws to be maintained or to restore: in the case of a failing state due to the failure there has not been any rule of law; in case of a state severely breaching international standards of Human Rights it would be ridiculous to restore the old system.

2 - In a properly working state only very few judges have to deal with penal law and crime; most of them are working in the field of civil and trade law, administrative, financial, social and tax law, constitutional and Human rights questions and so on. But all these

¹ In this context it does not matter whether the reason given to justify the war is shared or not, as the problems discussed are independent of this.

questions need as a basis a minimum of safe and secure environment – and that is a matter of police work and penal justice including public prosecutors and judges for criminal law.

3 - Nowadays the normal situation for armed forces on operations is to be in a country without functioning police forces and without prosecutors and criminal courts. So – and this is nothing new – armed forces are to maintain law and order for the population in the state they have entered. This task is vital for the people concerned, vital for the future of the territory, vital for the press, vital for the public opinion, vital for the international community, vital for the mission and often even afterwards vital for the public justification of the reason to go in at all. In total: a safe and secure environment is a vital basis for Human Rights.

4 - Armed forces - doing police work by procuring and saving a secure environment for a country, its population and its institutions - have more or less practical problems due to their different training and equipment. Far more relevant seems to be the legal problems armed forces are faced with. Here I do not refer to a lack of an international legal basis for procuring a safe and secure environment (like for example the Dayton Agreement in BiH); the problem goes deeper: armed forces on international operations cannot - by the nature of their mission - be submitted to local authorities, so for example they cannot get a search or arrest warrant from local judges. In consequence armed forces have to act according to their military powers, for example when searching illegal weapons. These military powers are restricted and channeled by law laid down in international treaties or Security Council Resolutions, but never the less by military powers. Proper police work and criminal procedures in a normal state work different. To solve such legal and administrative problems the execution of civil power has to be handed over to civilian authorities as soon as possible – if possible! Exactly here arises a major problem to be looked into because there are no sufficient and efficient civil authorities to hand over the tasks.

5 - Comparing the situation of armed forces in a failing state with armed forces at home in a situation of war defending the own state leads to a strange phenomenon to be considered: nobody seriously looking at a way to defend a country against an aggression ever thought the military would be able to do this alone; only overall defence – military means together with strong civilian efforts, including keeping up government, administration and support – are deemed to be able to *maintain* a state. But when sending the military outside people often think then the military could be able to *build up* a state by themselves. This seems to be ridiculous.

6 - Democracy needs the rule of law – but the rule of law can exist without democracy. So the rule of law has to be implemented before, at least in parallel with, democracy. The attempt to implement democracy only (and then even leave a country) is no real solution.

First list of possible questions to be dealt with:

- Are the above-mentioned theses correct?
- Are there possibilities for the military to build up a functioning system after having entered a failing state? If so, which and how?
- What has to be done? By whom?
- What kind of help is needed? Is it needed? Or does it have to come from inside the country?
- Is there an obligation to respect the law of the receiving state? In which regard?
- ...? ...? ...? ...? ...? ...?

All these questions can be approached in theory or by practical experience.

Call for assistance:

An exchange of views, a better analysis of facts and problems is the first step to improve a situation felt to be improper. The Committee never can solve the problem; it only will try to give a forum to discuss future improvement.

Everybody reading this first statement is encouraged to help preparing and/or shaping the Committees session during the next International Congress of the Society.

First of all, all members and all those who would like to become members of the Society are warmly welcome to join the Committee and its work ahead.

The theme also should be of interest for the international community, including EU, NATO and UN, as well as for NGOs; their help and experience is inevitable for conclusions.

(Dr. Alexander Poretschkin, President of the Committee for General Affairs)

RECENT DEVELOPMENTS, LEGISLATION & JURISPRUDENCE

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 and Conferences

EXTRAORDINARY CONFERENCE OF THE CFE TREATY PARTIES FOLLOWING RUSSIAN SUSPENSION

An Extraordinary Conference of the States Parties to the Treaty on Conventional Armed Forces in Europe (CFE Treaty) took place in Vienna from 11 to 15 July 2007 at the request of Russia. Russia invoked its security concerns and appealed to the NATO members, signatories to this Treaty, to take these into consideration and to propose positive and constructive measures. The exceptional circumstances invoked by Russia under article XXI §2 CFE Treaty were "the serious problems that have arisen with the NATO nations' implementation of the Treaty as a result of its enlargement and NATO foot-dragging on ratification of the Agreement on the Adaptation of the CFE Treaty, signed in 1999". No final document was adopted despite the submission of a draft text attempting to meet Russian concerns and *inter alia* reaffirming the importance of the current CFE Treaty and the desire to see a quick entry into force of the 19 November 1999 amendments. However, a declaration made by Italy on behalf of 22 participating States expressed the regret that no agreement could be reached and called for further talks in the near future. In fact, a further conference is planned for this Fall. See http://www.osce.org/conferences/cfe_2007.html and *Sentinelle* No. 114 of 24 June 2007.

The suspension by Russia of its obligations under the CFE Treaty, already announced in April this year (see also the previous issue of this *Newsletter*), was officially proclaimed/confirmed mid July (see <http://en.rian.ru/russia/20070714/68953043.html>, <http://en.rian.ru/russia/20070714/68965335.html> and <http://en.rian.ru/russia/20070714/68959498.html>) in reaction to the announcement by the US of the deployment of a anti-missile shield in Europe. This suspension was said to be justified by «exceptional circumstances» affecting the security of Russia and requiring immediate measures, shall be effective 150 days after the decision according to the presidential order. Six reasons have been named by Russia for this measure, including the fact that NATO's enlargement to Eastern European countries has reinforced its military capabilities, allegedly in violation of the CFE Treaty. Russia also claims that NATO had promised in 1999 not to install any bases on the territories of its new members, to which NATO has responded that the bases that have been opened there are only training centres. Russia also stated that it has ratified the 1999 amendments whereas the NATO members have not. See <http://select.nytimes.com/gst/abstract.html?res=F30A16F7345A0C768DDDAE0894DF404482> and D.B. Hollis, 'Russia Suspends CFE Treaty Participation', *ASIL Insight*, 23 July 2007, <http://asil.org/insights/2007/07/insights070723.html>.

(Julien Féret, intern)

BIOLOGICAL WEAPONS CONVENTION IMPLEMENTATION SUPPORT UNIT

The Sixth Review Conference of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction agreed at its meeting of December 2006 to establish an Implementation Support Unit (ISU) for the Convention within the Geneva Branch of the UN Office for Disarmament Affairs. Until now, the Convention did not have a support unit. The ISU is mandated to provide administrative support, including acting as a focal point for States Parties who submit information, as well as promoting confidence-building measures. Additionally, it is tasked with

encouraging universal adherence to the ban on biological weapons and to persuade the remaining States not party to join the Convention. The ISU was officially launched on 20 August 2007. It will provide concise annual reports on its activities to the annual Meeting of States Parties and will have its mandate reviewed at the Seventh Review Conference in 2011.

For more information see:

[http://www.unog.ch/80256EDD006B8954/\(httpAssets\)/12F9BC8D8F5DB0B6C12571A200318F92/\\$file/BWC_Backgrounder.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/12F9BC8D8F5DB0B6C12571A200318F92/$file/BWC_Backgrounder.pdf) and

[http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/5C8FD1D2ACD70C16C125733D0045779C?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/5C8FD1D2ACD70C16C125733D0045779C?OpenDocument).

(Isabelle Heyndrickx)

US-AUSTRALIAN DEFENCE TRADE COOPERATION TREATY SIGNED

On 5 September 2007, US President Bush and Australian Prime Minister Howard signed the U.S. Australia Defense Trade Cooperation Treaty, which is designed to facilitate the trade of defense goods within a "secure circle" of the two governments and its defense contractors that are able to meet certain standards. Exports that are not within the "secure circle" must obtain U.S. and Australian approval. See <http://www.state.gov/t/pm/rls/fs/91763.htm> and *ILIB* of 21 September 2007.

(Frederik Naert, Director of Publications)

US-UK DEFENSE TRADE COOPERATION TREATY SIGNED

On 26 June 2007, US President Bush and UK Prime Minister Blair signed the US-UK Defense Trade Cooperation Treaty, which aims to foster closer ties between both nations and between their military and security industries. It essentially creates a license-free zone for certain items/projects involving listed firms agreed upon by the two countries and also aims to enhance the interoperability between both nations' armed forces and of research and development cooperation programmes. See http://www.boston.com/news/world/europe/articles/2007/06/28/us_britain_sign_long_delayed_military_trade_pact/ and *Sentinel* No. 115 of 1 July 2007.

(Cathérine Monfrini, intern)

International Organisations

DEVELOPMENTS AT THE UN SECURITY COUNCIL²

On 29 June 2007, acting under Chapter VII of the UN Charter, the UN Security Council adopted Resolution 1762, which terminates the mandates given to the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) and the IAEA in Iraq. UNMOVIC was charged with finding and dismantling/destroying Iraq's chemical and biological weapons, as well as its long range missiles, whereas the IAEA nuclear verification office in Iraq was responsible for dismantling the country's nuclear programme. See also *ILIB* of 27 July 2007; *Sentinel* No. 116 of 7 July 2007 and UN press release of 30 June 2007.

(Cathérine Monfrini, intern)

On 22 June 2007, the UN Security Council discussed the protection of civilians in armed conflict. See <http://www.un.org/News/Press/docs//2007/sc9057.doc.htm>. In a press statement, it called for greater protection for civilians, who continue to account for the majority of casualties in situations of armed conflict and expressed its "grave concern" at the suffering of civilians and highlighted that parties to armed conflict are primarily responsible for making efforts to ensure that civilians are protected. See <http://www.un.org/News/Press/docs/2007/sc9058.doc.htm>.

² For documents, see <http://www.un.org/documents>.

On 31 July 2007 in Resolution 1769, the Security Council approved the creation of a hybrid UN-AU peacekeeping force to quell the violence and instability plaguing the Darfur region of Sudan. This operation – to be known as UNAMID – has an initial mandate of 12 months and will incorporate the existing AU Mission in Sudan (AMIS), which has been deployed across Darfur since 2004. It will become the largest peacekeeping force in the world. By October UNAMID is scheduled to have its management, command and control structures in place, and then by the end of the year it is expected to be ready to take over operations from AMIS. UNAMID is tasked with acting under Chapter VII of the UN Charter to support the “early and effective implementation” of last year’s Darfur Peace Agreement between the Government and the rebels, and it is also mandated to protect civilians, prevent armed attacks and ensure the security of aid workers and its own personnel and facilities. See also *ILIB* of 27 July 2007; *Sentinelle* No. 117 of 9 September 2007 and various previous issues of this *Newsletter*.

In Resolution 1771 (10 August 2007), the Security Council extended its arms embargo against militia groups operating in the DRC until 15 February 2008 and condemned the continuing illicit flow of weapons into and around the country. The Council said it was most concerned about the situation in the far East of the DRC, especially the provinces of North and South Kivu and the Ituri district.

In Resolution 1772 (20 August 2007), the Security Council extended the African Union-led mission in Somalia by six months while approving continued contingency planning for a possible United Nations peacekeeping operation in the country. Four days later In Resolution 1773 it renewed UNFIL's mandate until 31 August 2008 and called on all parties in the region to play their part to turn last year’s cessation of hostilities between Israel and Hezbollah into a permanent ceasefire and a more durable solution.

(Rosalie Danneels & Diana-Maria. Alesandrini, interns)

On 28 August 2007, the Security Council stressed that conflicts between and within nations have grown so complex in recent years that the UN's capacity to deal with difficult crises needs to be enhanced. See UN Doc. S/PRST/2007/31, UN press release of 28 August 2007 and <http://www.un.org/News/Press/docs//2007/sc9105.doc.htm>. The UN Secretary-General is expected to submit shortly to the Assembly a follow-up to the 1998 report issued by his predecessor on the causes of conflict in Africa and the promotion of durable peace and development, as well as proposals for strengthening the mediation capabilities of the UN's Department of Political Affairs.

On 19 September 2007, voicing its concern about increased violence and terrorism in Afghanistan, the Security Council approved the extension of the NATO-led International Security Assistance Force (ISAF) in the country for twelve months beyond 13 October 2007 in Resolution 1776. Russia abstained, expressing concern over the new issue of maritime interception which did not appear in previous resolutions on Afghanistan and which Russia considers to be necessary exclusively to combat terrorism in Afghanistan and not for other purposes. See UN press release of this date. The preamble of the Resolution expresses in this respect “*appreciation for the leadership provided by [NATO], and for the contributions of many nations to ISAF and to the OEF coalition, including its maritime interdiction component*”.

(Frederik Naert, Director of Publications)

UNGA BUDGET COMMITTEE APPROVES PEACEKEEPING REFORM MEASURES

On 27 June 2007, the UN General Assembly's budget committee approved a bunch of proposals to strengthen the capacity of the UN to create and sustain peacekeeping operations, including by restructuring the Department of Peacekeeping Operations. See UN press release of that day.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

UN GENERAL ASSEMBLY ADOPTS DECLARATION ON RIGHTS OF INDIGENOUS PEOPLES

On 13 September 2007, the UN General Assembly adopted a landmark declaration outlining the rights of the world's estimated 370 million indigenous people and outlawing discrimination against them. The Declaration sets out the individual and collective rights of indigenous peoples and inter alia recognizes their right to self-determination and to freely determine their political status and freely pursue their economic, social and cultural development. The declaration, a non-binding text, was adopted by 143 votes in favour, with 11 abstentions and votes against by Australia, Canada, New Zealand and the US. See <http://www.un.org/apps/news/story.asp?NewsID=23794&Cr=indigenous&Cr1=> and <http://www.un.org/esa/socdev/unpfii/en/declaration.html> (with a link to the text).

(Sophie Tourreille, intern)

PROGRESS ON IRAN AT THE IAEA

On 13 July 2007, the International Atomic Energy Agency (IAEA) announced that it had reached an agreement with Iran on inspections and safeguards. See UN press release of that date. Furthermore, Iran has addressed the questions of the IAEA about its past plutonium programme and both parties now consider that matter resolved, according to an IAEA statement of 28 August 2007. Also, a joint work plan on how to resolve outstanding issues between the agency and Iran was agreed (see <http://www.iaea.org/Publications/Documents/Infcircs/2007/infcirc711.pdf>). In the IAEA's report of 12 September 2007 on developments in Iran since 23 May 2007, the IAEA states that Iran has not proliferated nuclear materials and has provided clarifications on its plutonium programme. Nevertheless, the IAEA declared that some important issues still need to be verified, although Iran has agreed to a work plan to settle these within a specific time framework. Moreover, it seems Iran has not suspended its enrichment activities and continues with the construction of a heavy water reactor. See UN press releases of 10 and 12 September 2007; <http://www.un.org/News/briefings/docs/2007/db070912.doc.htm> and <http://www.iaea.org/NewsCenter/News/2007/bog121007.html>. Last December, the Security Council adopted a resolution banning trade with Iran in all items, which could contribute to the country's enrichment-related activities, or to the development of nuclear weapon delivery systems. See generally <http://www.iaea.org/NewsCenter/Focus/laealran/index.shtml>.

(Rosalie Danneels, Diana-Maria Alesandrini & Sophie Tourreille, interns)

COUNCIL OF EUROPE PARLIAMENT DOCUMENTS ON SECRET CIA DETENTIONS IN EUROPE

On 27 June 2007, the Parliamentary Assembly of the Council of Europe expressed its support for the report by Swiss member of Parliament Dick Marty on these detentions (see previous issues of this Newsletter). In its Resolution 1562 (2007) it has declared that it «*now considers as established with a high degree of probability that such secret detention centres operated by the CIA have existed for some years in [Poland and Romania], though not ruling out the possibility that secret CIA detentions may also have occurred in other Council of Europe member states*». The Assembly furthermore calls on member States not to play any (further) role in the detention or transfer via their territory of persons detained at Guantanamo. It also stresses the importance of reducing to an acceptable minimum the recourse to state secrets and national security to block inquiries into alleged human rights abuses by State agents and calls for victims of such illegal practices to be fittingly rehabilitated and compensated. Moreover, it asks that NATO make public supplementary elements of its 4 October 2001 authorization. The Assembly also criticized the lack of progress on the matter in the Committee of Ministers despite its own proposals and those of the Council of Europe's Secretary-General. See especially Recommendation 1801 (2007). For the documents, see <http://www.assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/ERES1562.htm> and <http://www.assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/EREC1801.htm>.

Despite this support, the Marty report has been much criticized, including by European Commissioner for Justice Franco Frattini, who attacked the report for being based on anonymous sources that cannot be verified. See http://jurist.law.pitt.edu/paperchase/2007_06_27_indexarch.php#6218025340000190629.

International(ised) Courts

DEVELOPMENTS AT THE ICC³

In July 2007, a delegation of the ICRC concluded an unannounced three-day visit to the Detention Centre of the ICC. The findings and conclusions of the inspection were presented orally by the ICRC delegates to the ICC's Registrar. This independent inspection was classified as a 'complete visit' which included an initial meeting with the Registrar, a tour of the Detention Centre and private interviews with persons detained at the ICC Detention Centre. See <http://www.icc-cpi.int/press/pressreleases/263.html>.

ON 17 July 2007, Japan ratified the ICC Statute. With Japan, 105 countries have ratified the Rome Statute, which will enter into force for Japan on 1 October 2007. See <http://www.icc-cpi.int/press/pressreleases/262.html>.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

DEVELOPMENTS AT THE ICTY AND ICTR⁴

On 21 June 2007, the ICTR issued an arrest warrant against Munyeshyaka, a priest and Rwandan national, on charges of genocide as well as rape, extermination and murder as crimes against humanity. The suspect has been arrested in France on 20 July 2007. See http://jurist.law.pitt.edu/paperchase/2007_06_23_indexarch.php#4747454965799579833 and http://jurist.law.pitt.edu/paperchase/2007_07_21_indexarch.php#1453619109782167095, as well as http://www.trial-ch.org/fr/trial-watch/profil/db/facts/wenceslas_munyeshyaka_112.html.

(Cathérine Monfrini, intern)

Former Serbian police general Vladimir Djordjevic was arrested on 17 June 2007 by Montenegrin authorities on charges of murder of hundreds of Albanians and of persecution and forced deportation of 800.000 Kosovars in Kosovo in 1999. Six other high ranking Serbian officers are accused of the same facts. Apparently under pressure from the EU and the US, Serbia has launched a series of prosecutions and arrests of suspected war criminals during the last few months. See <http://jurist.law.pitt.edu/paperchase/2007/06/montenegro-arrests-un-indicted-war.php> and http://www.trial-ch.org/fr/trial-watch/profile/db/facts/vlastimir_djordjevic_526.html.

On 5 July 2007, the ICTY refused the request to transfer the case of former commander of the Bosnian armed forces Rasim Delic, charged with war crimes, from the Court to the Bosnian authorities (see the decision at <http://www.un.org/icty/delic/trialc/decision-e/070705.pdf>). The request was made following the ICTY's decision to reduce the number of witnesses and the scope of the trial. See also <http://jurist.law.pitt.edu/paperchase/2007/07/icty-denies-prosecution-request-to-move.php>.

(Julien Féret, intern)

In July 2007, the 19th African Regional Conference of Interpol asked all National Central Bureaus to provide the assistance required for the arrest of eighteen remaining Rwandan war crimes fugitives. It stressed that it is of the greatest importance that they are apprehended before December 2008, the scheduled closure of the Tribunal. See <http://www.interpol.int/Public/ICPO/PressReleases/PR2007/PR200733.asp>.

On 13 July 2007, Juvénal Rugambarara, who was mayor of Bicumbi commune in Kigali-Rural Prefecture in Rwanda from September 1993 to late April 1994, pleaded guilty to a charge of extermination as a crime against humanity. He made the plea after two years of negotiations with prosecutors, who agreed to withdraw eight other charges that included genocide, torture and rape. Mr. Rugambarara apologized for his actions in the genocide. The ICTR found that Mr. Rugambarara failed as mayor to take the necessary and reasonable

³ See generally <http://www.icc-cpi.int>.

⁴ See generally respectively <http://www.un.org/icty> and <http://69.94.11.53>.

measures to establish an investigation into the killings committed in Bicumbi commune or to apprehend and punish the perpetrators.

On 7 August 2007, Ukraine entered into an agreement on enforcement of sentences with the ICTY, see <http://www.un.org/icty/pressreal/2007/pr1180e.htm>.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

SPECIAL COURT FOR SIERRA LEONE⁵

On 10 July 2007, the UK and the SCSL signed an agreement allowing the imprisonment of former Liberian President Taylor in Britain if he is convicted by the SCSL. In June, the UK House of Commons passed the International Tribunals (Sierra Leone) Act 2007, establishing a legal basis for the SCSL to sentence Taylor to prison time in the UK. Taylor is facing charges for murder, rape, and the recruitment and use of child soldiers during a bloody civil war. See http://jurist.law.pitt.edu/paperchase/2007_07_11_indexarch.php#3525961479971184020.

On 19 July 2007, the Court sentenced Brima, Kamara, and Kanu, three former leaders of the Armed Forces Revolutionary Council, to at least 45 years of imprisonment (see also the previous issue of this Newsletter). See http://jurist.law.pitt.edu/paperchase/2007_07_19_indexarch.php#1010748346780398856 and http://www.sc-sl.org/Documents/AFRC_19JUL07_SEN.pdf.

On 2 August 2007, the SCSL convicted two former leaders of a pro-government militia of war crimes committed during the country's civil war in the 1990s. Moinina Fofana and Allieu Kondewa of the Civil Defence Forces group were each found guilty by the SCSL's trial chamber of four counts of murder, cruel treatment, pillage and collective punishments. Mr. Kondewa was also convicted of recruiting child combatants. See <http://www.sc-sl.org/Press/pressrelease-080207.pdf>.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA⁶

On 18 July 2007, Co-prosecutors for the Extraordinary Chambers in the Courts of Cambodia submitted their first introductory submission referring factual allegations of 25 instances of murder, torture, unlawful detention, forced labour, as well as religious, political and ethnic persecution, and other crimes. See http://jurist.law.pitt.edu/paperchase/2007_07_18_indexarch.php#1532723718132807341.

On 31 July 2007, former Khmer Rouge prison chief Kaing Guek Iev, also known as Duch, was charged with crimes against humanity. He was arrested in 1999 on genocide charges and was then charged by a military court with crimes against humanity in 2002 and war crimes. See http://jurist.law.pitt.edu/paperchase/2007_07_31_indexarch.php#7800558418209236865 and ILIB of 27 July 2007.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

On Friday 19 September 2007, Cambodian police arrested Nuon Chea, the most senior surviving member of the notorious Khmer Rouge regime and former second in command in the Khmer. He was immediately charged with crimes against humanity and war crimes and placed in provisional detention by the co-investigating judges of the Extraordinary Chambers in the Courts of Cambodia. See UN press release of that day and <http://news.bbc.co.uk/2/hi/asia-pacific/7002053.stm>.

(LTC Frank Adaka, intern)

HARIRI TRIBUNAL

⁵See generally <http://www.sc-sl.org>.

⁶ See generally <http://www.eccc.gov.kh>.
http://www.justiceinitiative.org/db/resource2?res_id=103814.

See also

On 17 August 2007, UN Secretary-General Ban Ki-moon welcomed the Netherlands' communication that the country was "favourably disposed to hosting" the Special Tribunal for Lebanon, which is being set up to prosecute those persons responsible for the assassination of former Lebanese Prime Minister Rafiq Hariri. Mr. Ban sends a delegation to the Netherlands to discuss the practical arrangements required for creating and operating the court. See UN press release of 17 August 2007 and <http://www.un.org/apps/sq/sqstats.asp?nid=2709>.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

EUROPEAN COURT OF HUMAN RIGHTS

On 26 July 2007 in the case of *Musayev and Others v. Russia*, 26 July 2007 (applications nos. 57941/00, 58699/00 and 60403/00), the European Court of Human Rights issued a harsh denunciation of the Russian government, saying that its failure to prosecute soldiers responsible for the killings of a group of civilians in the capital of Chechnya indicated its lack of concern about the crime. The court ordered Russia to pay damages of about 160.000 EUR to the families of 11 people who were killed. The judgment is available online at <http://www.echr.coe.int/echr>. See also M. Schwartz, 'European Court Assails Russia over Killings in Chechnya', *The International Herald Tribune*, 26 July 2007 (<http://www.ihf.com/articles/2007/07/26/news/russia.php>).

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

On 31 July 2007, in the case of *Asan and Others v. Turkey* (Application No. 56003/00), the Court held that Turkey violated Article 3 (torture), Article 13 (effective remedy), and Article 5 (liberty and security) of the European Human Rights Convention when Turkish police detained and tortured Turkish nationals suspected of aiding and abetting a terrorist organization and awarded each of the twelve applicants damages ranging from 5.500 to 12.700 Euros. The Court found a violation of the length of applicants' detention without prompt legal review pursuant to Article 5 § 3 and found a violation of Article 5 § 4 (lack of an effective domestic remedy) (§§ 91-123). See also *ILIB* of 9 August 2007.

(Frederik Naert, Director of Publications)

EUROPEAN COURT OF JUSTICE RULING ON HUMAN RIGHTS AND TERROR LISTS

In its judgments of 11 July 2007 in Cases T-47/03 (*Jose Maria Sison v Council of the European Union*) and T-327/03 (*Stichting Al-Aqsa v Council of the European Union*), the Court of First Instance confirmed its findings in case T-228/02, *Organisation des Modjahedines du peuple d'Iran v. Council of the European Union* (see the 2007/1 issue of this Newsletter), holding that certain fundamental rights, especially the rights of the defence and the right to effective judicial protection, and also the obligation to state reasons, are in principle fully applicable to the adoption of a Community decision freezing funds pursuant to discretionary measures implementing UN Security Council Resolution 1373 and that those rights and safeguards were not respected in these two cases and, therefore, that the contested decisions must be annulled in so far as they concern Mr Sison and Al-Aqsa, respectively. The judgments are available online at <http://curia.europa.eu>. See also H. Mahoney, 'EU Court Annuls Assets Freeze for Two Terror List Members', 11 July 2007, <http://euobserver.com/9/24463/?rk=1>.

(Frederik Naert, Director of Publications)

National Developments

FORMER RWANDAN OFFICER CONVICTED IN BELGIUM FOR 1994 KILLINGS IN RWANDA

Bernard Ntuyahaga, a former major in the Rwandan armed forces, was condemned on 4 July 2007 for the premeditated murder of ten Belgian blue helmets in Rwanda in 1994, at the beginning of the genocide. The jury of the Belgian court ("Cour d'Assises") also ruled that he was guilty of the murder of several Tutsis but acquitted him of the murder charge in respect of then Rwandan Prime Minister Uwilingiyimana and her husband. The jury pronounced a sentence of 20 years imprisonment, i.e. less than the life sentence requested by the

prosecution, and took into account as mitigating factors the social and historical context, namely Rwanda knew profound tensions and regional discriminations in 1994, and the fact that Ntuyahaga also saved the life of several Tutsis out of friendship. The accused's statement that he has no regrets and would act in the same manner today did not affect the court, which said that he was but a small part in an important chain of events and that his sentence was not discouraging and could be seen in the framework of a possible reconciliation in Rwandan society.

Ntuyahaga, who denied any involvement in the murder of the blue helmets, was extradited to Tanzania in 1998. The charges of genocide and crimes against humanity against him in respect of these killings were no longer pursued by the ICTR in 1999. In 2004 the former major voluntarily surrendered to the Belgian authorities while an extradition request had been pending for a long time. The trial started in April 2007 and the sentence was pronounced on 5 July 2007. On 23 July, he appealed the decision. See:

- <http://jurist.law.pitt.edu/paperchase/2007/07/belgium-court-convicts-rwanda-ex.php>;
- http://www.trial-ch.org/en/trial-watch/profile/db/facts/bernard_ntuyahaga_477.html;
- <http://www.reuters.com/article/latestCrisis/idUSL0512763>.

(Julien Féret, intern)

BOSNIAN WAR CRIMES JUDGMENTS

On 17 July 2007, the [War Crimes Chamber of the Court of Bosnia and Herzegovina](http://www.sudbih.gov.ba/?jezik=e) (see <http://www.sudbih.gov.ba/?jezik=e>) rendered the first instance verdict in the case of Niset Ramic, finding the Accused guilty of War crimes against civilians and sentencing him to 30 years compound long term imprisonment sentence. See http://www.publicinternationallaw.org/warcrimeswatch/archives/wcpw_vol02issue24.html#bih3.

On 18 July 2007, the [Chamber](#) absolved former Bosnian Serb interior minister and later justice minister Momcilo Mandic of every charges, including war crimes against civilians and crimes against humanity. The court held that, although the prosecution proved the existence of criminal acts, it did not prove that Mandic was responsible. See http://jurist.law.pitt.edu/paperchase/2007_07_19_indexarch.php#215086109336610262 and http://www.publicinternationallaw.org/warcrimeswatch/archives/wcpw_vol02issue24.html#bih5.

On 14 August 2007, the Appellate Panel of the Chamber rendered its verdict, finding Boban Šimšić guilty of Crimes against humanity, committed in the period between April and July 1992 in the Višegrad Municipality as a member of the reserve police unit of the Ministry of Interior of Republika Srpska, and sentencing him to 14 years imprisonment. See http://www.publicinternationallaw.org/warcrimeswatch/archives/wcpw_vol02issue26.html#bih3.

On 24 August 2007, Nenad Tanaskovic was found guilty of Crimes against humanity committed in the Višegrad Municipality in 1992 and was sentenced to 12 years imprisonment. See http://www.publicinternationallaw.org/warcrimeswatch/archives/wcpw_vol03issue01.html#bih2.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

SUSPENSION OF MOROCCAN CONTINGENT IN CÔTE D'IVOIRE FOLLOWING REPORTED ABUSE

In July 2007, the UN announced that, acting on the findings of an internal investigation conducted by its Mission in Côte d'Ivoire (UNOCI, see <http://www.un.org/depts/dpko/missions/unoci/>), which revealed serious allegations of widespread sexual exploitation and abuse by peacekeepers there, the UN has suspended the Moroccan contingent concerned and has started to discuss the matter with Moroccan officials. The UN's Office of Internal Oversight Services is currently conducting a full investigation, but the UN has decided to suspend the contingent's activities and has

cantoned the unit within its base. See UN press releases of 20 and 23 July 2007 and http://www.un.org/News/briefings/docs/2007/070725_Lute.doc.htm.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

DEVELOPMENTS IN THE DRC

On 4 July 2007, the UN High Commissioner for Human Rights expressed her concern over the decision by a military court in the DRC's Katanga Province late June to acquit all defendants of killings, torture and other abuses that occurred during an operation by the country's armed forces, despite the presence at the trial of substantial eye-witness testimony and material evidence pointing to the commission of serious and deliberate human rights violations. She urged the appeals court to issue a better decision. See UN press release of 4 July 2007.

In contrast, the UN peacekeeping mission to the DRC welcomed the conviction by a Congolese court of nine Government soldiers for killing 31 unarmed civilians last year. The court in Bunia, the capital of Ituri province in the north-east of the country, found nine defendants guilty of war crimes, rape, arson, pillaging and murder and handed down lengthy sentences, including life in prison for the leader of the assault on 11 August 2006. See UN press release of 30 July 2007.

On 27 July 2007, the UN reported that both the security forces and protestors claiming electoral fraud shared responsibility for deadly violence in the DRC earlier 2007, the high death toll pointed to an excessive use of lethal force by the army and police, who are now enjoying impunity. See UN press release, 27 July 2007. In a related development, Yakin Ertürk, the Special Rapporteur on violence against women, its causes and consequences, said that violence against women in the DRC "seems to be perceived by large sectors of society to be normal." Having visited the DRC, she said sexual violence "is rampant and committed by non-state armed groups, the Armed Forces of the DRC, the National Congolese Police and increasingly also by civilians" and said it is particularly troubling that major perpetrators of grave human rights violations are not excluded from being integrated into the regular armed forces.

See also <http://www.monuc.org/News.aspx?newsId=15424>.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

Furthermore, MONUC's report on human rights in the DRC for July 2007, released on 17 September 2007 (see <http://www.monuc.org/News.aspx?newsId=15424>), states that Government soldiers remain responsible for the country's worst human rights abuses, carrying out arbitrary executions and raping, robbing or extorting civilians, while rebel forces also commit human rights violations, especially in the violence-wracked Kivu provinces in the far east of the country, adding that the widespread climate of impunity allows many abuses to go unpunished.

(Frederik Naert, Director of Publications)

ALLEGATIONS OF IHL VIOLATIONS IN ETHIOPIA

In a report published on 4 July 2007, Human Rights Watch has denounced violations of international humanitarian law allegedly committed in the conflict in the East of the country between Ethiopian armed forces and separatist rebels of the Ogaden National Liberation Front. The NGO reminds both parties of their obligations to protect civilians and to ensure their access to humanitarian aid. Instead, hundreds of civilians have been forced to leave their burned villages, have been killed or have suffered abuse upon refusing to support one of the belligerent parties. In addition, an almost complete commercial blockade (including food stuffs) has been imposed in certain parts of the region. See http://jurist.law.pitt.edu/paperchase/2007_07_05_indexarch.php#2856089651508343484 and <http://hrw.org/english/docs/2007/07/02/ethiop16327.htm>.

(Cathérine Monfrini, intern)

FRENCH ARREST RWANDAN GENOCIDE SUSPECTS

On 20 July 2007, French authorities arrested five suspects possibly involved in the 1994 Rwandan genocide. The suspects may be surrendered to the ICTR or might be tried in France, as French magistrates have also opened an investigation. See http://jurist.law.pitt.edu/paperchase/2007_07_21_indexarch.php#1453619109782167095.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

German Federal Constitutional Court Rejects Legal Action against TORNADO Deployment in Afghanistan

For over five years now, the Bundeswehr has been participating in the operations of the NATO-led International Security Assistance Force (ISAF) in Afghanistan on the basis of the decisions taken by the Federal Government, which were approved by the German Bundestag. In February 2007, the Federal Government decided to go beyond the previous commitment and provide ISAF with capabilities for aerial reconnaissance and surveillance, as requested by NATO. In concrete terms, this involved aircraft of the type "Tornado RECCE", which possess the ability to conduct imaging reconnaissance by day and by night. On 9 March 2007, the German Bundestag approved this motion submitted by the Federal Government.

The PDS/Die Linke faction in the Bundestag opposed the Federal Government's decision to deploy Tornados in Afghanistan by filing an "Organklage" (i.e. a suit brought by one federal institution against another) before the Federal Constitutional Court. It invoked a violation of its parliamentary rights, pursuant to Section 2 of Art. 59 of the Basic Law, to participate in the conclusion of international treaties, claiming that NATO, by leading the ISAF mission, was participating in a military operation that did not have any connection with security in the Euro-Atlantic region, thereby transgressing the limits of the NATO integration programme to which the German legislative had agreed in the year 1955. Furthermore, it claimed that the reorientation of the Alliance towards a "global security service provider", as expressed in the declaration issued by the NATO summit of 28/29 November 2006 in Riga, went beyond the scope of the NATO Treaty and, thereby, was outside the terms of reference of the German law on participation of 1955, and that ISAF cooperation with Operation Enduring Freedom (OEF) – by forwarding the intelligence gathered by the Tornado RECCE flights – was in violation of the precept of peace mandated by the Basic Law. The PDS/Die Linke faction concluded that the illegality, in terms of international law, of OEF or at least of some of the actions conducted within the scope of OEF also extended to ISAF.

On 3 July 2007, the Federal Constitutional Court rejected the petition of the PDS/Die Linke faction as unjustified on the grounds that the prerogatives of Bundestag had not been violated by the decision of the Federal Government, stating that, on the one hand, the ISAF mission in Afghanistan serves the security of the Euro-Atlantic region and thereby is within the scope of the NATO Treaty and that of the German law on participation; that the regional term of reference of the NATO Treaty does not mean that military operations have to be restricted to the territory of the parties to said Treaty, and that the ISAF mission is not aimed exclusively at the security of Afghanistan but equally, and especially, at the protection of the Euro-Atlantic region against future attacks.

On the other hand, in the words of the Court, the ISAF operation in Afghanistan does not mean that NATO has turned away, in structural terms, from its purpose of preserving peace; ISAF is intended to enforce and preserve peace in order to establish a foundation for civilian nation-building, and the character of the NATO Treaty is not altered by the cooperation of ISAF with OEF, that is, the direct combat against terrorists because this cooperation does not disestablish the legal and factual separation of ISAF and OEF; the Tornado aircraft operating within the scope of ISAF are intended for reconnaissance efforts but not for providing close air support and are armed for the sole purposes of self-defence; furthermore, the forwarding of intelligence to OEF is envisaged only if this is required for the execution of the ISAF operation or for the security of ISAF forces.

Following the rejection of the legal action by the Federal Constitutional Court, the debate over the extension of the various Bundeswehr missions in Afghanistan, meaning the basic ISAF mandate, the additional mandate for reconnaissance and surveillance from the air within

the scope of ISAF and the OEF mandate, will henceforth be conducted in the political field again and no longer in court.

(Dr. Dieter Weingärtner, President of the German Group of the Society)

GUATEMALA ESTABLISHES COMMISSION AGAINST IMPUNITY

This summer, the Guatemalan Congress voted to establish the International Commission against Impunity in Guatemala. The Commission will conduct its own inquiries and will also help local institutions. While it will be an independent, non-UN body, its commissioner will be appointed by the Secretary-General and report periodically to him. See UN press release of 1 August 2007.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

CONVICTION OF 'CHEMICAL ALI'

On 4 September 2007, the Appeals Chamber of the Iraqi High Tribunal confirmed the death sentence of Ali Hassan Al Majid, also known as 'Chemical Ali', as well as two other accused, for the slaughter of tens of thousands of Kurds during the 1988 Anfal campaign. The sentence was scheduled to be executed within 30 days. See http://www.rfi.fr/actufr/articles/093/article_56089.asp and http://jurist.law.pitt.edu/paperchase/2007_09_04_indexarch.php#6394139568966439176.

(Sophie Turreille, intern)

US CONTRACTOR BANNED BY IRAQ OVER SHOOTING

On 18 September 2007, Blackwater, an American Contractor that provides security to some top American officials in Iraq has been banned from working in the country by the Iraqi Government after a shooting incident that left a number of Iraqis, allegedly civilians, dead and involved an American Diplomatic convoy. An Iraqi Ministry of Interior Spokesman, stated that the Iraqi authorities had cancelled the company's license and that the Government would prosecute the participants. But under the rules that govern private security contractors in Iraq, the Iraqi authorities do not appear to have the legal authority to do so. A law issued by the American authorities in Iraq before the US handed over security to Iraqis, CPA Order No. 17, gives private security companies operating in Iraq immunity from Iraqi Law. See http://www.nytimes.com/2007/09/18/world/middleeast/18iraq.html?_r=1&ref=middleeast&oref=slogin.

(LTC Frank Adaka, intern)

IRELAND'S CODE OF MILITARY DISCIPLINE UPDATED: DEFENCE (AMENDMENT) ACT 2007

Ireland, like the UK, has a common law legal system but it also has a written constitution. The military justice system is laid down in the Defence Act 1954. Following an extensive review major structural changes have been implemented by the Defence (Amendment) Act 2007⁷. These were influenced by ECHR case law e.g., *Engel v Netherlands*⁸ and *Findlay v. The UK*⁹, by Canada's National Defence Act, Australian, New Zealand and US military justice systems, Irish case law, the recommendations of the Military Law Review Board, the ECHR Act of 2003 and the observations of the Irish Human Rights Commission¹⁰.

A statutory distinction is introduced between disciplinary offences (scheduled offences), which may be dealt with by summary process and offences, both disciplinary and criminal, which may only be tried by court-martial¹¹.

⁷ Defence (Amendment) Act 2007, available at www.oireachtas.ie.

⁸ *Engel and Others v Netherlands*, (1976) 1 EHRR 647.

⁹ (1997) 24 EHRR 221, Reports of Judgments and Decisions 1997-I.

¹⁰ [www.ihrc.ie/_fileupload/misc/Observations_on_Defence_\(Amendment\)_\(No.2\)_Bill_2006.doc](http://www.ihrc.ie/_fileupload/misc/Observations_on_Defence_(Amendment)_(No.2)_Bill_2006.doc)

¹¹ Defence (Amendment) Act 2007, Chapter 3, sections 20, 21, 22, 24 and 27.

New structures include a Director of Military Prosecutions (the Director)¹², a Court-Martial Administrator (CMA)¹³ and the replacement of the Judge Advocate by a Military Judge¹⁴. A permanent Summary Court-Martial¹⁵, composed of a military judge sitting alone, is established. It will deal with most courts-martial.

Summary Process¹⁶

The summary process can only deal with scheduled offences in respect of all ranks up to and including Commandant (Major). Legal representation is not allowed but an assisting person may be present at the investigation¹⁷. New requirements for notice and service of documents are introduced¹⁸. At the first hearing the person charged must be informed that he/she may elect to have the case dealt with by court-martial¹⁹. There is an absolute right of appeal from the summary process to a Summary Court-Martial²⁰. Detention by a commanding officer is abolished.

Trial by Court-Martial

A person may be tried by a court-martial only on a direction by the Director. On remand a prosecution file is sent to the Director, who, exercising powers similar to the Director of Public Prosecutions (DPP), issues a direction²¹. He may direct that no trial be held or that the person be tried by any of the 3 classes of court-martial.

A Summary Court-Martial has jurisdiction to;

- a. hear an appeal against a 'determination' made and/or a 'punishment' awarded by a summary process,
- b. try a charge referred to it by the Director,
- c. decide legal aid applications.

A Summary Court-Martial decision, on an appeal, is final, subject to the possibility of a 'case stated', on a point of law only, to the Courts-Martial Appeal Court²².

A General or Limited Court-Martial comes into being on an order of the Court-Martial Administrator (CMA), when so directed by the Director²³. The CMA selects the members of the court-martial board. A board may include one senior NCO. The court will comprise a military judge and a court-martial board of not less than 5 or 3 members, as the case may be. The board will decide issues of fact only²⁴. Findings of fact require a two-thirds majority instead of a simple majority²⁵.

Director of Military Prosecutions (Director)²⁶

This appointment is based on that in the UK and Canada. He must be an officer and a lawyer of not less than ten years standing. He is appointed by the Government and is independent of the chain of command. There will be no assessment reports on his performance. His powers are similar to those of the DPP. It is an offence to attempt to influence him as to a prosecution²⁷. He can only be removed for cause shown.

¹² Defence (Amendment) Act 2007, section 33.

¹³ Defence (Amendment) Act 2007, section 32.

¹⁴ Defence (Amendment) Act 2007, section 34.

¹⁵ Defence (Amendment) Act 2007, section 38.

¹⁶ Defence (Amendment) Act 2007, Chapter 3.

¹⁷ Defence (Amendment) Act 2007, Chapter 3, sections 23, 24 and 28.

¹⁸ Defence (Amendment) Act 2007, Chapter 3, sections 23, 24 and 28.

¹⁹ Defence (Amendment) Act 2007, Chapter 3, sections 23 and 24.

²⁰ Defence (Amendment) Act 2007, Chapter 3, section 26.

²¹ Defence (Amendment) Act 2007, Chapter IVB, section 33.

²² Defence (Amendment) Act 2007, section 26.

²³ Defence (Amendment) Act 2007, sections 32 and 37.

²⁴ Defence (Amendment) Act 2007, section 48.

²⁵ Defence (Amendment) Act 2007, section 48.

²⁶ Defence (Amendment) Act 2007, section 33.

²⁷ Defence (Amendment) Act 2007, section 18.

Military Judge²⁸

The military judge replaces the Judge Advocate. He must be an officer and a lawyer of not less than ten years standing. He is appointed by the President on the recommendation of the Government and is independent of the chain of command. There will be no assessment reports on his performance. His term of office is until retirement. He can only be removed for cause shown. The military judge decides all issues of law and will hand down sentence alone²⁹.

Other significant changes include powers for the military judge to take into account the effect of an offence on the victim, to suspend custodial sentences, to order the payment of fines or compensation by instalments, and new powers to deal with accused persons suffering from mental disorders.

(LTC T. McCourt, Judge Advocate)

ISRAELI COURT ORDERS CHANGE TO SECURITY BARRIER

On 4 September 2007, the Israeli High Court of Justice (<http://elyon1.court.gov.il/eng/home/index.html>) ordered the government to reroute a section of its separation barrier that had split the West Bank village of Bilin from much of its farmland. The panel of three judges ruled unanimously that a mile-long section of the barrier should be redrawn and rebuilt in a "reasonable period of time." Chief Justice Dorit Beinisch wrote in the ruling, "We were not convinced that it is necessary for security-military reasons to retain the current route that passes on Bilin's lands." On 29 August 2007, the Court had rejected petitions against the barrier route near the Alfei Menashe Jewish settlement. The Court has ordered other reroutings in the past (see e.g. the 2005/4 en 2006/2 issues of this *Newsletter*). See I. Kershner, 'Israeli Court Orders Barrier Rerouted', *The New York Times*, 5 September 2007.

(Frederik Naert, Director of Publications)

JURISDICTIONAL ISSUE IN PROSECUTION OF US SOLDIER IN ITALY OVER IRAQ INCIDENT

On 10 July 2007, a lawyer defending a US soldier charged in the 2005 killing of Italian intelligence agent Nicola Calipari in Iraq argued in court that Italy does not have jurisdiction in the case, arguing that members of multinational forces operating in Iraq are under "exclusive jurisdiction" of the country that sent them. The soldier is being tried in absentia on charges of murder and attempted murder. Rome has not sought his extradition, and the Pentagon has indicated that he would not be extradited in any case. See <http://apnews.myway.com/article/20070710/D8Q9QTCO1.html>.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

UN BANS USE OF RUBBER BULLETS BY POLICE IN KOSOVO

On 3 July 2007, the UN Police chief in Kosovo, Mr. Monk, has banned the use of rubber bullets by any police unit in the UN-run province, adding that Member States who contribute officers are also being consulted about outlawing their use in all other peacekeeping operations. The measure follows deaths resulting from the use of such bullets in crowd and riot control (see the previous issue of this *Newsletter*). The United Nations should review whether rubber bullets should ever be used again for crowd control use on a UN peacekeeping mission. See UN press releases of 3 July 2007 and [http://www.unmikonline.org/DPI/Transcripts.nsf/0/084A83C8371E7FEB125730D002A45E5/\\$FILE/Transcript%20of%20press%20briefing%20by%20Special%20Prosecutor%20Robert%20Dean%20-%202002%20July%202007.pdf](http://www.unmikonline.org/DPI/Transcripts.nsf/0/084A83C8371E7FEB125730D002A45E5/$FILE/Transcript%20of%20press%20briefing%20by%20Special%20Prosecutor%20Robert%20Dean%20-%202002%20July%202007.pdf).

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

²⁸ Defence (Amendment) Act 2007, section 34.

²⁹ Defence (Amendment) Act 2007, sections 38, 47 and 48.

DEVELOPMENTS REGARDING LEBANON, ISRAEL AND THE PALESTINIAN TERRITORIES

On 1 July 2007, a report by Human Rights Watch claimed Palestinian rocket attacks against Israeli civilians and Israeli military reprisals to them are violations of the law of war. The report explains that Palestinian militant groups deliberately launched approximately 2,700 rockets against Israeli civilian positions between September 2005 and May 2007, killing four and wounding 75 Israelis, and causing at least 23 Palestinian casualties. HRW also criticized the Israel Defence Forces for firing more than 14,600 artillery shells close to civilian populated areas in Gaza during the same period, killing 59 Palestinians and wounding 270. See <http://hrw.org/reports/2007/iopt0707/iopt0707webwcover.pdf> and http://jurist.law.pitt.edu/paperchase/2007_07_02_indexarch.php#8412345683166709895.

On 8 July 2007, the Israeli cabinet approved the release of 250 Palestinian prisoners. See http://jurist.law.pitt.edu/paperchase/2007_07_08_indexarch.php.

On 29 August 2007, HRW also alleged in a report that Hezbollah recklessly and sometimes intentionally fired rockets at civilian targets during the summer 2006 Lebanon conflict, conduct prohibited by international rules of war. See <http://hrw.org/reports/2007/iopt0807/> and http://jurist.law.pitt.edu/paperchase/2007_08_30_indexarch.php#1301524050471422432.

On 6 September 2007, HRW said that Israel's indiscriminate air strikes, not Hezbollah's shielding as claimed by Israeli officials, caused most of the approximately 900 civilian deaths in Lebanon during the July-August 2006 war between Israel and Hezbollah. See <http://hrw.org/reports/2007/lebanon0907/>.

Late August 2007, Hezbollah announced that it is organizing lawsuits against Israel seeking reparations for damage caused during the summer 2006 Lebanon conflict. Hezbollah will pay legal fees to facilitate lawsuits filed by Lebanese citizens with multiple-citizenships in third-party states. See http://jurist.law.pitt.edu/paperchase/2007_08_29_indexarch.php#398449304124290965.

See also above on the Hariri Tribunal.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

MEXICAN COURT ACQUITS FORMER PRESIDENT OF GENOCIDE CHARGES

On 13 July 2007, the Mexican federal Criminal Tribunal acquitted former President Echeverria of any criminal responsibility for the 1968 student protester slaughter, despite ruling that the student massacre, which took place during Echeverria's term as Interior Minister, constituted genocide. The Court did not find any evidence that Echeverria was involved. See http://jurist.law.pitt.edu/paperchase/2007_07_13_indexarch.php#3130074213199636571.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

SERIOUS HUMAN RIGHTS VIOLATIONS IN MYANMAR DENOUNCED BY UN AND ICRC

In the course of May 2007, the UN Working Group on Arbitrary Detention stated that the prolonged detention of Daw Aung San Suu Kyi (principal leader of the democratic opposition in the country and Nobel peace prize winner) by the country's authorities violates the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Moreover, given the regime's lack of reaction to repeated complaints, the ICRC exceptionally adopted a public statement denouncing the human rights violations in the country, in particular through a statement on 29 June 2007 by ICRC president J. Kellenberger. See http://jurist.law.pitt.edu/paperchase/2007_06_29_indexarch.php#2606271259786428585 and articles published in *Le Monde* of 29 June and 1 July 2007, as well as <http://www.icrc.org/web/fre/sitefre0.nsf/htmlall/myanmar?opendocument> and <http://www.icrc.org/web/fre/sitefre0.nsf/htmlall/myanmar-news-27112006?opendocument>.

(Cathérine Monfrini, intern)

REPORT GENERALLY CLEARS DUTCH FORCES FROM ALLEGATIONS OF ABUSE IN IRAQ

On 18 June 2007, a Dutch Parliamentary inquiry into allegations of abuse by Dutch forces in Iraq published a report which generally cleared Dutch forces from these charges, though it did conclude that the treatment of detainees was not in accordance with the Dutch policy decision to treat them as prisoners of war (despite the fact that they did not have this status as a matter of law) and that the treatment of one detainee did amount to degrading treatment in the sense of article 3 European Convention on Human Rights. Furthermore, the decision to exclude a legal advisor from interrogations was criticized. See *Rapport van de Commissie van onderzoek naar de betrokkenheid van Nederlandse militairen bij mogelijke misstanden bij gesprekken met gedetineerden in Irak*, available online at http://www.tweedekamer.nl/images/Onderzoek_vermeende_mishandelingen_door_Nederlandse_militairen_in_Irak_in_2003_bijl3_tcm118-129075.pdf, especially pp. 70-75 (in Dutch).

(Frederik Naert, Director of Publications)

NEW PHILIPPINE ANTI-TERROR LAW IN FORCE

On 15 July 2007, a controversial new anti-terrorism law entered into force in the Philippines. The Human Security Act 2007 authorizes the 72-hour detention of suspects without charge and allows for surveillance, wiretapping and seizure of assets. See http://jurist.lw.pitt.edu/paperchase/2007_07_15_indexarch.php#3471496924010503840.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

HABRE TO BE TRIED BY SENEGALESE COURT

On 12 July 2007, it was reported that former Chadian president Hissene Habre, who has been charged with crimes against humanity, will stand trial before a Senegalese criminal court, rather than before a special tribunal as it was previously scheduled. See http://jurist.law.pitt.edu/paperchase/2007_07_12_indexarch.php#9184357433850167061.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

ALLEGATIONS OF ABUSE IN SOMALI CONFLICT

According to a report released by Human Rights Watch on 13 August 2007, the Somali Transitional Federal Government, Ethiopian troops and insurgent forces were responsible for violations of the law of war during fighting between March and April 2007 in the vicinity of Somali capital Mogadishu. The TFG said the allegations were based on "wrong impressions of the reality on the ground." See <http://hrw.org/reports/2007/somalia0807/somalia0807webwcover.pdf> and http://jurist.law.pitt.edu/paperchase/2007_08_13_indexarch.php#979742517396831606.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

FORMER SOUTH AFRICAN OFFICIALS CONFESS ROLE IN ASSASSINATION PLOT

On 17 August 2007, two former South African officials pleaded guilty to attempted murder for their role in a 1989 plot to assassinate then-opposition member and current Director-General in the President's Office Frank Chikane. As part of the plea agreement with prosecutors, former Minister of Law and Order Adriaan Vlok and former police chief Johannes Van der Merwe were sentenced to 10-year prison terms, suspended so long as neither commits any crimes over the next five years. Three other former apartheid police officials were sentenced to five years, suspended for four years, for their involvement in the assassination plot. See http://jurist.law.pitt.edu/paperchase/2007_08_17_indexarch.php#2437315728947464270.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

DEVELOPMENTS IN SUDAN

In August 2007, Sudan announced that it has issued a decree abolishing legal immunities that protect police from criminal prosecution. The decree, issued by the police director-

general, allows police officers to be tried for crimes but also guarantees quick legal proceedings. See

http://jurist.law.pitt.edu/paperchase/2007_08_22_indexarch.php#8931097897723630498.

See also the section on the UN Security Council above.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

In the mean time, on 12 September 2007, UN Secretary-General Ban Ki-moon expressed deep concern at the Sudanese Government's "brutal aerial and ground attack" on the South Darfur town Haskanita the day before that has left at least 25 civilians dead according to reports by AMIS. See <http://www.un.org/apps/sg/sgstats.asp?nid=2731>.

(F. Naert)

THE NEW SANCTIONS SYSTEM IN THE SWISS MILITARY CRIMINAL CODE

As of 1 January 2007, a new general part of the Criminal Code and the Military Criminal Code (MCC) have entered into force in Switzerland. This change was due to the belief that in an ever changing society, also the sanctions for certain categories of crime needed a review. E.g., within the Swiss military, approximately 90 % of the cases involve sentences between 3 and 12 months of detention and it was thought that the offences in these cases should rather be punished with monetary sanctions.

The changes only concern criminal offences, not disciplinary offences. Moreover, crimes ("crimes") are now distinguished from lesser criminal offences ("délits") on the basis of the sanction: the former carry a sentence of over 3 years of detention (art. 12 MCC).

In fact, analogously to other States, the new codes now focus on a new type of "monetary sanction" (see below), which shall replace, whenever possible, detention. Other changes concern the fines (articles 36 and 60(c) MCC), which can now be charged up to a maximum of 10.000 Swiss Francs (previously 40.000), work of public utility (up to 720 working hours; articles 31 and 60(d) MCC) and traditional detention (article 34 MCC). The possibility to expel someone from the Swiss armed forces (articles 48-49 MCC) or to reduce the rank (article 35 MCC) have been maintained.

The calculation of the "monetary sanction" (article 28 MCC) depends on the income and the guilt of the accused, meaning that the number of daily aliquots to be charged will be based on the gravity of the committed offence (the maximum is 360 daily aliquots), whereas the amount to be paid for each daily aliquot will be based on the income of the accused on the day of the sentence. The "monetary sanction" may be imposed also on people with a very low income. Therefore, when conducting investigations, the military investigating magistrate and the military public prosecutor will have to assess the financial situation of the accused in order to draft the indictment and the proposed penalty. This assessment is to be done on the basis of the last tax declaration.

It is important to note that this type of "monetary sanction" may be suspended (probation). Particularly in cases of violations of traffic regulations, if the breach is a serious one the accused may be charged with a monetary sanction suspended on probation. If the breach is a minor one, the judge may instead decide to charge the accused with a fine, in which case, however, no conditional suspension will be allowed. It has therefore often been argued that this difference is unfair, since from the perspective of the accused it is almost more advantageous to commit a serious breach, in which case no money will have to be effectively paid. This argument, however, overlooks that monetary sanctions are registered in the central federal registry of criminal records, whereas fines are not. In addition, both the Swiss MCC and the civilian criminal code provide for the possibility to combine a monetary sanction with a fine, in order to avoid the above mentioned situation.

The monetary sanction, as said, is limited to 360 daily aliquots, meaning that serious crimes will only be condemned with detention. For condemnations between 6 months and 1 year, the judge may choose between detention or a monetary sanction. Both can benefit from the conditional suspension, if they are below the limit of 24 months (previously 18 months). The condemnation may now also be suspended partially. For condemnations below 6 months, detention will be therefore the exception. In these cases another possibility will be the work of public utility. The calculation of the working hours depends on the daily aliquots,

which, again, will depend on the gravity of the offence. For each daily aliquot a maximum of 4 working hours is foreseen.

The new laws have not been well received by law enforcement personnel, since the impression is that most criminals will have better chances to avoid an effective sanction. The counterargument, however, is that only the most serious criminals should sit in gaol and that this change will facilitate the prisons' administration, decreasing its costs.

The Swiss Military Criminal Code is available in French, German and Italian at the website http://www.admin.ch/ch/i/rs/321_0/index.html#id-1.

(Specialist Officer R. Arnold, Candidate examining magistrate Swiss Military Tribunal No. 8)

TAJIKISTAN COURT CONVICTS TWO FORMER GUANTANAMO BAY DETAINEES

On 17 August 2007, the Supreme Court of Tajikistan sentenced two former Guantanamo Bay detainees to 17 years in prison each for serving as mercenaries in Afghanistan. Mukit Vokhidov and Rukhiddin Sharopov crossed to Afghanistan in 2001 as members of the al Qaeda-linked Islamic Movement of Uzbekistan; they were captured by US forces operating in the north of the country in November that year and later sent to the US military prison at Guantanamo Bay. See http://jurist.law.pitt.edu/paperchase/2007_08_18_indexarch.php#7271110086193448313.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

UN TO BOYCOTT TIMOR-LESTE RECONCILIATION COMMISSION IF IT MAY GRANT AMNESTY FOR INTERNATIONAL CRIMES

UN officials will boycott a commission set up jointly by Indonesia and Timor-Leste to foster reconciliation after the latter's bloody struggle for independence, unless it is precluded from recommending amnesty for crimes against humanity and other gross violations of human rights. UN policy "is that the Organization cannot endorse or condone amnesties for genocide, crimes against humanity, war crimes or gross violations of human rights, nor should it do anything that might foster them," Secretary-General Ban Ki-moon's spokesperson said on 26 July 2007. See <http://www.un.org/News/Press/docs/2007/sqsm11101.doc.htm>.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

DEVELOPMENTS IN THE UK

On 28 June 2007, a Scottish judicial review body ruled that Abdel Basset Ali al-Megrahi, a former Libyan intelligence official jailed for the 1988 Lockerbie bombing in 2001 after a trial under Scottish law at a special court in the Netherlands, might have been wrongfully convicted and was entitled to appeal the verdict against him. The Scottish Criminal Cases Review Commission delivered an 800-page report — much of it still secret — that identified several areas where "a miscarriage of justice may have occurred." He was the only person convicted in connection with the terrorist attack. Mr. Megrahi, who has always proclaimed his innocence, lost an initial appeal in 2002 and is serving a 27-year sentence in a Scottish prison. See <http://www.sccrc.org.uk/ViewFile.aspx?id=293>.

On 9 July 2007, four men accused of plotting to bomb the London transit system in July 2005 were found guilty and sentenced to life in prison two days later. The bombs, which failed to explode on July 21, 2005, were connected with the terrorist attacks on the transit system two weeks earlier in which 52 commuters were killed, said the judge. The jury was unable to reach a verdict on two other defendants in the case but the prosecution said it would seek a retrial. See <http://jurist.law.pitt.edu/paperchase/2007/07/uk-court-finds-four-guilty-in-2005.php> ; http://jurist.law.pitt.edu/paperchase/2007_07_11_indexarch.php#1215984846413002142 and http://jurist.law.pitt.edu/paperchase/2007_07_10_indexarch.php#2941064557230341502.

On the UK-SCSL sentencing agreement for former Liberian President Taylor, see the SCSL section above.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

On 12 September 2007, it was reported that a UK citizen who was detained in Guantanamo between 2002 and 2004 has filed a law suit against British intelligence services accusing them of complicity in torture. He denounces that agents of these services who came to interrogate him have benefited from the torture he claims to have been subjected to and considers that the British authorities were aware of these practices and did nothing to stop them. See http://jurist.law.pitt.edu/paperchase/2007_09_12_indexarch.php.

(Sophie Turreille, intern)

DEVELOPMENTS IN THE US

On 14 June 2007, the Court of Appeal for the Second Circuit decided to admit the continuation of the law suits brought by Javaid Iqbal against former Attorney General John Ashcroft, FBI Director Robert Mueller and other US officials (see the decision at http://www.ca2.uscourts.gov:8080/isysnative/RDpcT3BpbnNcT1BOXDA1LTU3NjhY3Zfb3BuLnBkZg==/05-5768_cv_opn.pdf#xml=http://10.213.23.111:8080/isysquery/irfdc4/5/hilite).

Following the 9/11 attacks, Iqbal claims he had been detained "solely because of [his] race, religion, and national origin". He also claims to have been the victim of mistreatment during his detention. The Court stressed the gravity of the situation following the 9/11 attacks and the inquiries into these attacks but added that constitutional rights, such as "the right not to be subjected to needlessly harsh conditions of confinement, the right to be free from the use of excessive force, and the right not to be subjected to ethnic or religious discrimination", must enjoy "steadfast protection" in both "normal" and "unusual times". It rejected the argument that the officials could not be held personally responsible, which they invoked, claiming that they had acted reasonably and were therefore shielded by qualified immunity. Already in September 2005, US District Judge John Gleeson ruled that Ashcroft and Mueller were correctly identified as defendants in the case given their personal involvement in the creation and functioning of the unconstitutional policies concerned. Of 762 persons arrested and detained following 9/11, Iqbal, a Muslim of Pakistan origin arrested on 2 November 2001 for non violent federal crimes unrelated to terrorism, was one of the 184 suspects detained in maximum security facilities. Ehab Elmanhrabi, an Egyptian Muslim in a similar situation, had initially also filed a law suit, but later accepted a settlement of 300.000 US \$. Arrested in October 2001, he was cleared of suspected links with terrorism in August 2002 but deported from the US in 2003 for credit card fraud. See <http://jurist.law.pitt.edu/paperchase/2007/06/federal-appeals-court-allows-ex-911.php> and http://www.boston.com/news/nation/articles/2007/06/14/ashcroft_can_remain_in_detainees_suit/.

On 29 June 2007, the US Supreme Court decided to hear the *habeas corpus* appeals by some terror detainees in the cases of *Boumediene v. Bush* and *Al Odah v. US* (see the decision at <http://www.supremecourtus.gov/orders/courtorders/062907pzor.pdf>). It thereby overturned its earlier decision of 2 April 2007 (see the previous issue of this Newsletter). See also <http://jurist.law.pitt.edu/paperchase/2007/06/supreme-court-to-hear-guantanamo-bay.php>.

(Julien Féret, intern)

On 5 July 2007, US District Judge Cecilia Altonaga upheld torture charges against the son of former Liberian President Charles Taylor rejecting his argument that a federal anti-torture statute outdoes Congressional authority because it criminalizes behaviour of foreign government officials outside the territorial jurisdiction of the United States. Altonaga also rejected his assertion according to which the statute was vague in its definition of torture, deciding that his alleged crime would be considered torture in the "civilized world." See http://jurist.law.pitt.edu/paperchase/2007_07_06_indexarch.php#1297066860017228881.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

On 18 July 2007, a military jury sitting at Camp Pendleton, California, Wednesday convicted US Marine Cpl. Trent Thomas for his role in the 2006 kidnapping and murder of an Iraqi civilian in Hamdania. He was convicted of kidnapping and conspiracy to murder but acquitted of premeditated murder, making a false official statement and housebreaking. He could have been sentenced to life in prison but received only a bad-conduct discharge and a demotion to private on 20 July. See

http://jurist.law.pitt.edu/paperchase/2007_07_18_indexarch.php#7286014546409598850;
http://jurist.law.pitt.edu/paperchase/2007_07_20_indexarch.php#5735429714178152779 and
P. von Zielbauer, 'Web Sites Rally Support for G.I.'s in Legal Trouble', *The New York Times*, 22
July 2007.

On 20 July 2007, the United States Court of Appeals for the District of Columbia Circuit unanimously ordered the government to turn over virtually all its information on Guantánamo detainees who are challenging their detention in the case of requests by eight detainees for review of decisions by combatant status review tribunals. The court noted that the appeals court's review of the combatant status hearings was limited to determining whether the Pentagon followed its own procedures, and whether an enemy-combatant finding was supported by a preponderance of the evidence but said meaningful review of the military tribunals would not be possible without seeing all the evidence. It allowed the government to file its information with the court for review if the government argues the contents are too important to be released and defined government information as including only that which is reasonably available. The ruling allows the Pentagon to limit the subjects that the lawyers can discuss with detainees and authorizes special Pentagon teams to read the lawyers' mail and remove unauthorized comments. See W. Glaberson, 'Court Tells US to Reveal Data on Detainees at Guantánamo', *The New York Times*, 21 July 2007.

(Frederik Naert, Director of Publications)

On July 20, the US President issued an Executive Order regarding the interpretation of Common Article 3 of the Geneva Conventions and detention and interrogations programs of the Central Intelligence Agency (<http://www.whitehouse.gov/news/releases/2007/07/print/20070720-4.html>). It restates earlier determinations on the war on terror and determines that common Article 3 applies to the program of detention and interrogation operated by the Central Intelligence Agency. It adds that this program of detention and interrogation approved by the Director of the Central Intelligence Agency fully complies with the obligations of the United States under Common Article 3, provided that the conditions of confinement and interrogation practices of the program do not include a number of listed prohibited forms of treatment, including torture as defined in 18 U.S.C. § 2340 and acts prohibited by 18 U.S.C. § 2441(d) and proscribes further rules. See also ILIB of 27 July 2007. However, it was reported that US Judge Advocates General told a group of Republican senators that CIA prisoner interrogation methods authorized under this order could contravene the Geneva Conventions, see http://jurist.law.pitt.edu/paperchase/2007_08_25_indexarch.php#7938099149007851943.

On 10 August 2007, the US Supreme Court denied the request of Guantánamo Bay detainee Ahmed Belbacha to stay his transfer to Algeria despite his claims that he will be tortured and perhaps killed if returned to Algeria. See <http://www.supremecourtus.gov/orders/courtorders/081007pzz.pdf> and http://jurist.law.pitt.edu/paperchase/2007_08_10_indexarch.php#4166220342442422683.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

On 16 August 2007, a federal jury in Florida found Jose Padilla and his co-defendants Adham Amin Hassoun and Kifah Wael Jayyousi guilty of conspiracy to commit illegal violent acts outside the US, conspiracy to provide material support to terrorists and providing material support to terrorists (*United States v. Hassoun*, Southern District of Florida). He is scheduled to be sentenced in December. See [http://en.wikipedia.org/wiki/Jos%C3%A9_Padilla_\(alleged_terrorist\)](http://en.wikipedia.org/wiki/Jos%C3%A9_Padilla_(alleged_terrorist)) and http://jurist.law.pitt.edu/paperchase/2007_08_16_indexarch.php#5913070625748570288.

(Frederik Naert, Director of Publications)

On 22 August 2007 the US Court of Appeals for the Fourth Circuit agreed to reconsider its ruling that the military cannot seize and imprison civilians lawfully residing in the United States and detain them as "enemy combatants". See <http://www.scotusblog.com/movabletype/archives/AI%20Marri%20rehearing%20order%208-22-07.pdf> and http://jurist.law.pitt.edu/paperchase/2007_08_23_indexarch.php#1583080136991670529.

(Rosalie Danneels & Diana-Maria Alesandrini, interns)

On 31 August 2007, it was reported that up to a quarter of US Department of Justice civil appellate lawyers have refused to represent the US in the appeals procedures for Guantanamo detainees because they disagree with the government's legal arguments. Voir http://jurist.law.pitt.edu/paperchase/2007_08_31_indexarch.php.

(Sophie Turreille, intern)

Following the end of the completion of the prison sentence of former Panamanian dictator Noriega in the US on 9 September 2007 (with prisoner of war status), France has requested his extradition on charges of money laundering through French banks – he was sentenced *in absentia* to 10 years in jail in 1999 but France has agreed to hold a new trial if he is extradited. Noriega has sought to block his extradition. On 24 August 2007, a US judge refused to reject the French extradition request. See http://www.flsd.uscourts.gov/viewer/viewer.asp?file=/cases/pressDocs/188cr00079_1713.pdf and http://jurist.law.pitt.edu/paperchase/2007_08_24_indexarch.php#8993914470454809677. On 28 August, a US magistrate judge for the Southern District of Florida issued a ruling recommending that Noriega be extradited. See http://jurist.law.pitt.edu/paperchase/2007_08_28_indexarch.php#6391714871764812803. However, on 5 September 2007, senior U.S. District Court Judge William M. Hoveler granted in part Noriega's emergency motion for a stay of extradition to France, ordering Noriega to produce evidence to support his allegation that France will not follow the rules of the Third Geneva Convention and ordering the government to respond to Noriega's allegation. See http://www.flsd.uscourts.gov/viewer/viewer.asp?file=/cases/pressDocs/188cr00079_1716.pdf and *ILIB* of 7 September 2007. On 7 September 2007, the latter judge denied Noriega's petition for a writ of habeas corpus and lifted the partial emergency stay to extradition that he imposed on 5 September 2007. The same Court had determined in 1992 that Noriega was a prisoner of war pursuant to the Third Geneva Convention. The US has now presented information to the court that France plans to provide Noriega with the rights due him under that Convention, so that there is no obstacle to his extradition. See *United States v. Noriega*, Order Dismissing Defendant's Petition for Writ of Habeas Corpus and Lifting Stay of Extradition, District Court for the Southern District of Florida, http://www.flsd.uscourts.gov/viewer/viewer.asp?file=/cases/pressDocs/188cr00079_1720.pdf and *ILIB* of 21 September 2007.

(Rosalie Danneels & Diana-Maria Alesandrini, interns, & Frederik Naert)

On 5 September 2007, the US Secretary of the Navy handed down letters of censure to three US Marine officers (a Major-General and two Colonels) for improper performance of duties related to the reporting and investigation of the killing of 24 Iraqi civilians at Haditha (Iraq) in November 2005. As previous investigations did not indicate any Uniform Code of Military Justice (UCMJ) violation, the officers are not facing courts martial. Letters of censure are the most severe administrative punishment available to the Secretary of the Navy and may lead to the censured officers being denied promotion or losing full retirement benefits. See http://jurist.law.pitt.edu/paperchase/2007_09_06_indexarch.php#4629774726006103852.

On 6 September 2007, the US State Department stated that 16 Guantanamo Bay Detainees have been transferred to their home country of Saudi Arabia. The Saudi Interior Minister, Prince Nayef bin Abdul-Aziz welcomed the release of the detainees, and said he was hopeful that all Saudi detainees currently in custody in Guantanamo Bay would be returned to the country. See http://jurist.law.pitt.edu/paperchase/2007_09_06_indexarch.php#1212890925953734509.

(LTC Frank Adaka, intern)

On 7 September 2007, the U.S. District Court for the District of Columbia ordered Iran to pay 2,6 billion US \$ in compensatory damages to 26 survivors, almost one thousand family members, and representatives of the estates of the 241 US Marines killed in the bombing of their barracks in Beirut, Lebanon in 1983. The court refused to order punitive damages. See https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2001cv2684-47 and *ILIB* of 21 September 2007.

On 24 September 2007, the United States Court of Military Commission Review (set up in June this year, see <http://www.defenselink.mil/news/courtofmilitarycommissionreview.html>) overturned a lower court ruling, which had held that before the detainees could be tried in military tribunals, they had to be formally declared "alien unlawful enemy combatants" and

that military panels had found detainees to be enemy combatants but not specifically *unlawful* enemy combatants (see the previous issue of this *Newsletter*). Under the appeals ruling, prosecutors will be able to present new evidence to the trial judge hearing a case to support their contention that a detainee was an unlawful combatant and this status does not have to be determined in advance. The court sent the case of Omar Ahmed Khadr back to the trial judge for further consideration. See [http://www.defenselink.mil/news/Sep2007/KHADR%20Decision%20\(24%20Sep%2007\)\(25%20pages\).pdf](http://www.defenselink.mil/news/Sep2007/KHADR%20Decision%20(24%20Sep%2007)(25%20pages).pdf) and W. Glaberson, 'Court Advances Military Trials for Detainees', *The New York Times*, 25 September 2007.

Furthermore, supporters of the military in the US have started campaigns and have launched websites to support US forces facing trials, although the movement generally does not embrace cases that appear to be premeditated atrocities. See P. von Zielbauer, 'Web Sites Rally Support for G.I.'s in Legal Trouble', *The New York Times*, 22 July 2007.

Finally, Jean-Marie Henckaerts, one of the ICRC's Customary International Law Study, has responded to the initial US response to this study (see the 2007/1 issue of this *Newsletter*), see http://www.asil.org/pdfs/USComments_Rejoinder_Final.pdf and ILIB of 9 August 2007.

(F. Naert)

INTERESTING PUBLICATIONS

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* 2007.

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hb = hardback/hard cover and pb = paperback/soft cover.

G. BOAS, *The Milosevic Trial. Lessons for the Conduct of Complex Criminal Proceedings*, 2007, Cambridge, ISBN 978-0-521-70039-9 (HB);

Yoram DINSTEIN, *War, Agression and Self-Defence*, Cambridge UP, 2005, ISBN-13: 9780521616317 (PB) / 9780521850803 (HB)*

Michel DRAPEAU & Gilles LETOURNEAU, *Canadian Military Law Annotated*, Carswell-Tompson, 2006, ISBN 0-459-24408-6;*

Helen DUFFY, *The 'War on Terror' and the Framework of International Law*, Cambridge UP, 2005, ISBN-13 : 9780521547352 (PB) / 97805215838504 (HB)*

Caroline FOURNET, *The Crime of Destruction and the Law of Genocide. Their Impact on Collective Memory*, 2007, Ashgate, ISBN 978-0-7546-7001-8 (HB);

G. GOODWIN-GILL & J. McADAM, *The Refugee in International Law*, 3rd edition, 2007, Oxford, ISBN 978-0-19-920763-3 (PB);

Oren GROSS & Fionnuala Ni AOLAIN, *Law in Times of Crisis. Emergency Powers in Theory and Practice*, 2006, Cambridge, ISBN 978-0-521-541237 (PB) & 978-0-521-833516 (HB);

Ralph HENHAM & Paul BEHRENS (eds.), *The Criminal Law of Genocide*, 2007, Ashgate, ISBN 978-0-7546-4898-7 (HB);

John JANZEKOVIC, *The Use of Force in Humanitarian Intervention. Morality and Practicalities*, 2006, Ashgate, ISBN 978-0-7546-4850-6 (HB);

André KLIP & Göran SLUITER (eds.), *The International Criminal Tribunal for the Former Yugoslavia 2002-2003*, "Annotated Leading Cases of International Criminal Tribunals, vol. 11, 2007, Intersentia, ISBN 978-90-5095-597-3 (PB);

André KLIP & Göran SLUITER (eds.), *The International Criminal Tribunal for Rwanda 2003*, "Annotated Leading Cases of International Criminal Tribunals, vol. 12, 2007, Intersentia, ISBN 978-90-5095-651-3 (PB);

Boris KONDOCH, *International Peacekeeping*, 2007, Ashgate, ISBN 978-0-7546-2395-3 (HB);*

David KOPLOW, *Non-Lethal Weapons. The Law and Policy of Revolutionary Technologies for the Military and Law Enforcement*, Cambridge UP, 2006, ISBN-13 : 9780521674355 (PB) / ISBN-13: 9780521857581 / (HB)*

Outi KORHONEN, *National Approaches to Administration of Crisis Areas: Nine National Approaches: Belgium, Finland, France, Greece, Japan, Poland, Spain, United Kingdom, United States*, Helsinki: KDG Research & Publications, 2006, ISBN: 978-952-99650-1-4;*

Scott LECKIE, *Housing and Property Restitution Rights of Refugees and Displaced Persons. Law, Cases and Materials*, 2007, Cambridge, ISBN 978-0-521-858755 (HB);

Laurent MOREILLON, André KUHN, Aude BICHOVSKY, Virginie MAIRE, Baptiste VIREDAZ (eds.), *Droit pénal humanitaire*, Bruylant, 2005*

Jordan PAUST, *Beyond the Law. The Bush Administration's Unlawful Responses in the "War" on Terror*, Cambridge University Press, forthcoming (August 2007), ISBN : 978-0-521-71120-3 (PB) & 978-0-521-88426-6 (PB);

Photini PAZARTZIS, *La répression pénale des crimes internationaux. Justice pénale internationale*, 2007, Ed. Pédone, ISBN 978-2-23300511-3 ;

Steven D. ROPER & Lilian A. BARRIA, *Designing Criminal Tribunals. Sovereignty and International Concerns in the Protection of Human Rights*, 2007, Ashgate, ISBN 978-0-7546-4269-5 (HB);

Peter ROWE, *The Impact of Human Rights Law on Armed Forces*, Cambridge UP, 2006, ISBN-13: 9780521851701 (HP) / ISBN-13: 9780521617321 (PB);*

Hinrich SCHROEDER, *Die völkerrechtliche Verantwortlichkeit im Zusammenhang mit failed und failing States*, Nomos, 2007, ISBN 978-3-8329-2586-4;*

Stephane TALMON, *La non reconnaissance collective des Etats illégaux*, 2007, Editions Pédone (PB) ;

US Congressional Research Service, *Report on Private Security Contractors in Iraq: Background, Legal Status, and Other Issues*, Update 11 July 2007, http://www.nimj.com/documents/Private_Security_ContractorsRL32419_update_of_July_11_2007.pdf;

Simon WOLLENBERG, *Die Regierung von Konfliktgebieten durch die Vereinten Nationen*, Nomos, 2007, ISBN 978-3-8329-2463-8;*

Yearbook of International Humanitarian Law 2004, 2007, Cambridge, ISBN 978-90-6704-203-1 (HB);

Duke Journal of Gender Law & Policy, 'Gender, Sexuality & the Military', Vol. 14, May 2007, <http://www.law.duke.edu/journals/djglp/>

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