



NEWSLETTER OCTOBER/NOVEMBER/DECEMBER 2007

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EDITORIAL

Dear reader,

In a few weeks time, the Society will hold its seventh Seminar for Legal Advisors to the Armed Forces, but it will be its first Seminar held in Africa. When I drafted my first newsletter's editorial back in early 2003, I expressed my desire to contribute to an International Society for Military Law and the Law of War with a growing global reach. Our Seminar for Legal Advisors to the Armed Forces marks an important step in this intended development and I thank the Namibian authorities, the Seminar's Director, General Jan Peter Spijk and all other members of the organising committee already for their commitment and the efforts they have put into this event. Legal advisors to the armed forces from all over the world will convene to listen to expert presentations on topical issues, to exchange ideas and experience among each other and to enhance their professional networks. As many African legal advisors will participate, a particular attention will also be paid to issues related to African peacekeeping. This event may also turn out to have important structural implications, as some participants may return home with the idea of creating a National Group of the Society in their home country. The General Secretariat will make sure that relevant information on the procedural aspects of creating a National Group of the Society will be given to interested participants. Together for a stronger Society!

Ludwig Van Der Veken
Secretary-General

NEWS, ANNOUNCEMENTS OF CONFERENCES, SEMINARS, ETC.

The **Managing Board** of the Society has held a meeting in Brussels (Belgium) on 5 October 2007. The next meetings of the Society's **Managing Board** and **Board of Directors** will take place in Athens (Greece) on 7, 8 and 9 May 2008.

Honorary President Dr. Dieter Fleck has represented the Society at the **30th International Red Cross and Red Crescent Conference**. He has deposited a pledge on behalf of the Managing Board of the Society (See <http://www.icrc.org/applic/p130e.nsf/pbk/ADGU-78CDJ4?openDocument§ion=PBP>). Information on all pledges may be found on http://www.icrc.org/applic/p130e.nsf/va_navPage/POAI?openDocument&count=-1.

On 6 December 2007, the Belgian National Group of the Society has held an international **Conference in Brussels on 'the Militarisation of Outer Space: Policy and Legal Aspects'**, in cooperation with the Leuven Centre for Global Governance Studies, the Interdisciplinary Centre for Space Studies (KULeuven) and the Belgian Royal Military Academy. The proceedings will be published in 2008.

On 10 December 2007, the Forum for International Criminal Justice and Conflict, in conjunction with the Norwegian Red Cross and the International Peace and Research

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Heures d'ouvertures: Jours ouvrables de 08.30 h à 16.00 h
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Institute, Oslo, held a **Seminar on National Military Manuals and the Law of Armed Conflict**. The President of the Society Arne Willy Dahl and the Honorary President of the Society Dr. Dieter Fleck presented papers during the seminar. An executive summary of the seminar proceedings authored by the Norwegian Red Cross has been announced for our newsletter ISMLLW 2008/1.

The Ministries of Culture and of Defence of the Republic of Estonia organise an **International Conference in Tallinn (Estonia), on Protecting Cultural Heritage in Times of Armed Conflict**, from 7 to 8 February 2008. For more information, please contact Ms Marju Reismaa at marju.reismaa@kul.ee.

The Society's **VIIIth Seminar for Legal Advisors to the Armed Forces** will be held in Namibia from 3 to 9 March 2008. For more information, see www.soc-mil-law.org or contact the General Secretariat.

The Armed Forces Law Association of New Zealand will hold a **Conference on Security in the South Pacific Region – Civil Disorder and the Military; a Legal Minefield?** The conference will take place in Christchurch, New Zealand, from 4 to 6 April 2008. For more information, please consult <http://www.aflanz.org.nz/>.

Our former President of the Committee for Military Criminology and Criminal Law, Professor Dr. Pierre Thys, has announced the publication of a **blog on less lethal weapons** on www.anm-gestr.org/leblog (in French).

(Alfons Vanheusden, Assistant Secretary-General)

The School of Law at the University of the West of England is hosting an **International Symposium on the Regulation of Armed Conflict by International Law**. The Symposium will be held in Bristol (United Kingdom) from 3 to 5 September 2008.

The aim of this symposium is to review and examine the challenges facing international law relating to armed conflict and to identify gaps in knowledge, policy and practice. The symposium will provide an open forum where invited experts, presenters and other participants can discuss relevant issues and perspectives and candidly exchange their views.

Issues that may be explored within the framework of the symposium include:

- The emergence of new threats to peace and security e.g. terrorism, environmental damage, health pandemics, etc.
- The contributory role of non-state actors as a catalyst of conflict.
- Proliferation and control of (small) arms and weapons.
- The role of private military/security companies in armed conflict.
- The role and capabilities of non-governmental and international organisations during conflict.
- The role of international law in addressing the abuse and exploitation of women and children during conflict.
- The impact of armed conflict on migration (patterns) e.g. refugees, internally displaced people, etc.
- The role of international, regional, and non-governmental organisations in maintaining and restoring peace and security.
- The accountability of states, individuals, and organisations during peacekeeping operations.
- The role of international law in post-conflict reconstruction.
- Consideration of prosecution and dispute resolution methods.
- The role of international(ised) courts and tribunals in dealing with conflicts.
- The curbing and regulation of 'commodity conflicts' by economic measures e.g. diamonds in Sierra Leone, timber in Liberia, etc.
- The impact of conflict on (sustainable) development and governance.

The organisers call for papers addressing the aforementioned issues, or other issues related to the theme of the conference. Papers will be selected on the basis of abstracts of no more than 300 words. Abstracts should be submitted by email to ilac@uwe.ac.uk by 3rd March 2008. Notification of the outcome of submissions will be given no later than 31st March 2008.

If you have any queries relating to the symposium please contact the organising committee at ilac@uwe.ac.uk.

(General Secretariat)

SPECIALISED COMMITTEES

Membership of the specialised committees of the Society is open to all interested members of the Society. Members of our association are hereby invited to join one or more of the specialised committees if they have not yet joined in the past.

The first task of a specialised committee is the preparation of the respective specialised committee session during the tri-annual Congress. The next Congress will be held in Tunisia, in 2009 (exact date to be determined). A specialised committee session takes half a day of the Congress. The President of the Committee is free to organise this preparatory work. He could e.g. draft a questionnaire, exchange views by e-mail, organise an expert workshop which may serve as a basis for further work, organise one or more meeting(s) with his members etc. The goal is to come up with an academic programme with expert speakers for the specialised committee session of the Congress.

Apart from their main mission, the specialised committees are also encouraged to make concrete proposals in their respective fields of interest to exercise the Society's consultative status with the United Nations.

The specialised committees are the Committee for General Affairs (President: Dr. Alexander Poretschkin (Germany)), the Committee for Military Criminology and Criminal Law (President: Professor Dr. Michael Noone (United States)), the Committee for International Humanitarian Law (President: LtCol Marc Philippe (Canada)) and the Committee for History of Military Law and the Law of War (President: Professor Dr. Stefan Oeter (Germany)).

Interested members are invited to inform the General Secretariat before the end of April 2008 of his/her choice(s) and his/her contact data (Name, title, function, address, telephone number, fax number and possible e-mail address). The General Secretariat will subsequently inform the Presidents of the details of the members of their respective committee.

(Alfons Vanheusden, Assistant Secretary-General)

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

Brussels Conference on cluster munitions

On the 30th of October 2007, Belgium organized the European Regional Conference on cluster munitions, as a specifically European contribution to the global process towards the adoption by the end of 2008 of a legally binding international instrument prohibiting cluster munitions that cause unacceptable harm to civilians.

All 46 invited countries from the Euro-Atlantic area, many of them important producers and/or consumers of cluster munitions were represented in Brussels. Canada, the US and Russia were invited as observers and were also present.

The Brussels conference contributed to the discussions in two specific working sessions, namely on victim assistance and stockpile destruction.

For more information see:

- <http://www.diplomatie.be/nl/press/homedetails.asp?TEXTID=80711>
- <http://www.stopclustermunitions.org/dokumenti/dokument.asp?id=169>

(Isabelle Heyndrickx)

CCW mandate on cluster munitions

At the annual Meeting of States Parties to the Convention on Certain Conventional Weapons (CCW) held in Geneva, in November 2007, States agreed to *'negotiate a proposal to address urgently the humanitarian impact of cluster munitions, while striking a balance between military and humanitarian considerations'*.

Due to considerable differences of views, this mandate reflects a difficult compromise text, which lacks explicit reference to a legally binding instrument or the mentioning of any deadline. The CCW does unambiguously balance military against humanitarian considerations.

Although regarded significantly weaker than the Oslo Declaration, agreed on at the parallel Oslo Process, the CCW has the advantage of assembling the core users, producers and stockpilers among its states parties.

The Group of Governmental Experts of the CCW will meet in 2008, for a total of up to 7 weeks and will report on the progress made to the next meeting of the High Contracting Parties in November 2008.

For more information see:

- [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/73D70D0349367C99C125739300334440?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/73D70D0349367C99C125739300334440?OpenDocument)
- <http://hrw.org/english/docs/2007/11/13/global17320.htm>

(Isabelle Heyndrickx)

Vienna Conference on cluster munitions

From the 5th to the 7th of December 2007, more than 130 states and over 140 civil society representatives participated in the Vienna Conference on cluster munitions, the third major international conference in the follow-up of the so-called Oslo Process. This Process was launched in February 2007, when states agreed to conclude a new treaty by the end of 2008 banning cluster munitions that cause unacceptable harm to civilians.

Consensus appeared to emerge on humanitarian issues, such as helping victims, clearing areas and destroying stockpiles. However, the most contentious discussions at the conference revolved around the prohibition and definition of a cluster munition. Despite large participation, the meeting was marred by the absence of some of the key producers and stockpilers such as the USA, China, Israel and Russia.

The Oslo Process will continue to seek agreement on a new international treaty in the follow-up meeting in Wellington (February 2008) and Dublin (May 2008).

For more information see:

- www.clusterprocess.org

- <http://www.un.org/apps/news/story.asp?NewsID=24912&Cr=disarmament&Cr1=&Kw1=vienna&Kw2=cluster&Kw3=>
- <http://www.stopclustermunitions.org/news.asp?id=105>

(Isabelle Heyndrickx)

10th anniversary of the Mine Ban Treaty

Ten years ago, on 3 and 4 December 1997, 122 countries signed the Mine Ban Treaty in Ottawa, Canada. The treaty entered into force on 1 March 1999, faster than any other international treaty in history. It prohibits the use, production, stockpiling and transfer of antipersonnel mines, has deadlines for the destruction of stockpiles and the clearance of mined areas, and calls for assistance to mine survivors, as well as international cooperation and assistance.

As of November 2007, there are 156 States Parties to the treaty. Unfortunately, some states, including Russia, Burma and Korea continue to use landmines, as do armed rebel groups and militias in 10 countries. Some other states, such as the US, China, India and Pakistan, although refraining from using landmines, have refused to sign up to the treaty.

For more information see:

- http://www.icbl.org/news/10th_anniversary_factsheet
- http://news.bbc.co.uk/2/hi/in_depth/7121419.stm

(Isabelle Heyndrickx)

Middle East Peace Conference in Annapolis

Representatives of Israel, the Palestinian Liberation Organization and other invitees convened in the Naval Academy in Annapolis (Maryland, United States) on 27 November 2007 for a Middle East peace conference organized and hosted by the United States. Israel's Prime Minister Ehud Olmert and the President of the Palestinian Authority Mahmoud Abbas reached a joint understanding supporting a Two-State solution for the Israeli-Palestinian conflict, which was read by President George W. Bush at the conference. They agreed *inter alia* to engage in negotiations and to make every effort to conclude a peace treaty, resolving all outstanding issues before the end of 2008. See <http://www.whitehouse.gov/news/releases/2007/11/20071127.html>.

(Alfons Vanheusden)

International Organisations

Kosovo Status Talks Failed to Produce Agreement

Serbia and the Serbian province Kosovo have been unable to reach a negotiated settlement on the final status of Kosovo, according to a report submitted in December 2007 to the UN Security Council by the troika (made up of the European Union, Russia and the United States) set up to lead the recent intense and high-level negotiations. The Kosovo leadership supports independence but Serbia is opposed. The report added that the negotiation process had still been useful: The parties discovered areas where their interests aligned and agreed on the need to promote and protect multi-ethnic societies and address difficult issues holding back reconciliation, particularly the fate of missing persons and the return of displaced persons. Both parties restated their desire to seek a future under the common roof of the European Union and pledged that they would not use violence and refrain from any actions that might jeopardize the security situation in Kosovo and elsewhere. On 19 December 2007 the Security Council held a private debate over the question. See <http://www.un.org/apps/news/story.asp?NewsID=25061&Cr=kosovo&Cr1=> and <http://www.un.org/apps/news/story.asp?NewsID=25137&Cr=kosovo&Cr1=>

(Alfons Vanheusden)

Other developments at the UN Security Council

On 25 September 2007 in Resolution 1778, the Security Council approved the establishment in **Chad and the Central African Republic**, in consultation with the authorities of these countries, of a multidimensional presence intended to help create the security conditions conducive to a voluntary, secure and sustainable return of refugees and displaced persons. That presence will comprise the United Nations Mission in the Central African Republic and Chad (MINURCAT) and a Chapter VII authorised European Union operation (see on the latter <http://www.consilium.europa.eu/showPage.asp?id=1366&lang=en&mode=g>).

On 11 October 2007, the Security Council in S/PRST/2007/37 strongly deplored the use of violence against peaceful demonstrations in **Myanmar**, emphasised the importance of the early release of all political prisoners and remaining detainees and called on the Government of Myanmar and all other parties concerned to work together towards a de-escalation of the situation and a peaceful solution (see <http://www.un.org/News/Press/docs//2007/sc9139.doc.htm>).

Furthermore, the UN Security Council extended the mandate of the UN Mission in **Liberia** (UNMIL, Resolution 1777 of 20 September 2007); the UN Stabilisation Mission in **Haiti** - while reducing its military component and increasing its police component (MINUSTAH, Resolution 1780 of 15 October 2007); the UN Observer Mission in **Georgia** (UNOMIG, Resolution 1781 of 15 October 2007); the UN Mission for the Referendum in **Western Sahara** (MINURSO; Resolution 1783 of 31 October 2007); the UN Mission in **Sudan** (UNMIS, Resolution 1784 of 31 October 2007 – not to be confused with the hybrid UN-AU force UNAMID); the European Union Stabilisation Force in **Bosnia and Herzegovina** (EUFOR Althea; Resolution 1785 of 21 November 2007); UN Disengagement Observer Force (**UNDOF**, Resolution 1788 of 14 December 2007); the UN Peacekeeping Force in **Cyprus** (UNFICYP, Resolution 1789 of 14 December 2007) and of the UN Integrated Office in **Burundi** (BINUB, Resolution 1791 of 19 December 2007). On 18 December 2007 in Resolution 1790 the Security Council extended the mandate of the Multinational Force in **Iraq** by another year after a formal request from the Iraqi Government, which stated that it expected that this would be the last time it would be asking for such an extension.

(Frederik Naert, KULeuven)

UN Working Group on Mercenaries Concerned over PSCs

On 6 November 2007, the UN Working Group on the use of mercenaries (<http://www.ohchr.org/english/issues/mercenaries/index.htm>) said that a number of private security companies operating in conflict zones are engaging in new forms of mercenary activity, warning that States employing them could be liable for human rights violations committed by their personnel. It also expressed concern over the lack of regulation at the regional and national levels regarding private military and security companies. See UN press release of 6 November 2007 and <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/AC7F341BE422A006C125738B0055C48C?opendocument>. See also *infra* on the Blackwater affair.

(Frederik Naert, KULeuven)

International(ised) Courts

DEVELOPMENTS AT THE ICC¹

After the Court's announcement in May 2007 on the opening of an investigation in the Central African Republic (CAR), the International Criminal Court (ICC) has entered a protocol agreement with the CAR, on 18 October 2007, setting out the cooperation and protection that the Government will provide to court officials. A Court's field office has besides been opened in Bangui in the Central African Republic. See <http://www.icc-cpi.int/press/pressreleases/287.html> and <http://www.icc-cpi.int/press/pressreleases/288.html>.

About the situation in the Democratic Republic of the Congo, Germain Katanga, a Congolese national and alleged commander of the Force de résistance patriotique en Ituri

¹ See generally <http://www.icc-cpi.int>.

[Patriotic Resistance Force in Ituri] (FRPI) has been surrendered to the Court by the Congolese authorities on 17 October and transferred to the detention centre in The Hague. M. Katanga is alleged to have committed six war crimes and three crimes against humanity in the territory of Ituri, in the Democratic Republic of the Congo. See <http://www.icc-cpi.int/press/pressreleases/285.html>.

Furthermore, on 9 November 2007, Trial Chamber I of the Court decided that the trial in the case of Thomas Lubanga Dyilo, founder and leader of the Union des patriotes congolais [Union of Congolese Patriots] (UPC), shall commence on 31 March 2008. Thomas Lubanga Dyilo is prosecuted for having committed war crimes consisting of conscripting and enlisting children under the age of 15 years into the FPLC, the military wing of the UPC, and using them to participate actively in hostilities in Ituri, from September 2002 to 13 August 2003. He will be the first person to stand trial before the ICC. See <http://www.icc-cpi.int/press/pressreleases/301.html>.

During the sixth session of the Assembly of States Parties to the ICC, recently held at UN Headquarters in New York, Bruno Cotte of France, Uganda's Daniel David Ntanda Nsereko and Fumiko Saiga of Japan were elected to fulfill vacancies and serve as judges at the ICC. Besides, the Assembly adopted six resolutions: on the permanent premises of the International Criminal Court, on the programme budget for 2008, on the regulations of the Trust Fund for Victims, on the Financial Regulations and Rules of the Court, on the pension scheme regulations for judges of the Court and on strengthening the International Criminal Court and the Assembly of States Parties, in which it is, inter alia, decided that a Review Conference of the Rome Statute be held in the first semester of 2010. See <http://www.icc-cpi.int/press/pressreleases/306.html> and <http://www.icc-cpi.int/press/pressreleases/311.html>.

The ICC's Chief Prosecutor, Luis Moreno-Ocampo, told the UN Security Council that although "Sudan has known the nature of the case against Ahmad Harun and Ali Kushayb for 10 months, they have done nothing. They have taken no steps to prosecute them domestically, or to arrest and transfer them to The Hague", calling on the UN Security Council to send "a strong and unanimous message" to Khartoum to arrest and surrender them. Mr. Harun, currently Sudan's Minister of State for Humanitarian Affairs, and Mr. Kushayb, a leader of a pro-Government Janjaweed militia, are accused of targeting civilians in attacks on four villages in West Darfur between August 2003 and March 2004, according to their warrants, which outline multiple counts of personal responsibility for murder, rape and pillaging for each man. The Prosecutor said "massive crimes continued to be committed" across Darfur, where at least 200,000 people have been killed since 2003 and up to 2.5 million others forced to leave their homes because of fighting between rebel groups, Government forces and allied Janjaweed militias. He is planning to open two new investigations into the situation in Darfur: one into "a pattern of attacks by Sudanese officials" against civilians, and the other into the rising number of attacks, with involvement by rebels, against peacekeepers and aid workers. He noted that in late October 10 soldiers of the existing AU mission in Sudan were killed, eight others injured and one unaccounted for after an attack on the mission's base at Haskanita. He added that Darfur's displaced are routinely subjected to persecution and abuses, such as unlawful killings, illegal detentions and episodes of sexual violence, while those living inside camps for internally displaced persons (IDPs) "are deliberately kept in a state of destitution. Obstacles to the delivery of aid are part of the pattern of attacks." See <http://www.un.org/News/Press/docs//2007/sc9186.doc.htm> and <http://www.icc-cpi.int/press/pressreleases/307.html> and http://www.publicinternationallaw.org/warcrimeswatch/archives/wcpw_vol03issue08.html#cam1.

(Laurence De Graeve)

DEVELOPMENTS AT THE ICTY AND ICTR²

The ICTY (ICTY) held the former president Milan Martić, of the now defunct Serbian Republic of Krajina criminally liable for deaths and injuries resulting from cluster munition rocket attacks on Zagreb on 2 and 3 May 1995. These cluster munition attacks were reported to have killed

² See generally respectively <http://www.un.org/icty> and <http://69.94.11.53>.

7 civilians and injured 196. The Court ruled that the cluster rockets used by Martić (the M-87 Orkan) were “an indiscriminate weapon”, that “... by virtue of its characteristics and the firing range in this specific instance, the M-87 Orkan [cluster munition] was incapable of hitting specific targets”, and therefore could cause unacceptable civilian casualties when used in a populated area even if legitimate military targets were present. This legal ruling establishes a significant precedent for the use of cluster munitions in populated areas to be considered a violation of the laws of war because of their indiscriminate wide area effect at the time of use.

For more information see:

- www.un.org/icty/pressreal/2007/pr1162e-summary.htm
- http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1008990
- www.landmineaction.org/resources/resource.asp?resID=1067

(Isabelle Heyndrickx)

On 27 September 2007, the ICTY Appeals Chamber upheld the Trial Chamber's conviction of Mr. Bala, one former Kosovo Liberation Army (KLA) member and the acquittal of Fatmir Limaj and Isak Musliu. Haradin Bara, Fatmir Limaj and Isak Musliu were indicted by the ICTY for crimes committed against both Serb and Kosovo Albanian civilians in the KLA-run Llapushnik/Lapušnik prison camp between May and July 1998. Mr. Bala, a former guard at the camp, was convicted by the Trial Chamber for his personal role in the “maintenance and enforcement of the inhumane conditions” of the camp; for aiding the torture of one prisoner; and for participating in nine murders of camp prisoners, and was sentenced to 13 years' imprisonment on 30 November 2005. The Appeals Chamber recognised that Mr. Limaj was not criminally responsible for the offences he was indicted for in the context of command responsibility. Mr. Musliu's acquittal was upheld because he was neither present in the camp nor did he participate in its operation. See <http://www.un.org/icty/pressreal/2007/pr1184e.htm>.

On the same day, Mile Mrkšić, Colonel of the Yugoslav People's Army (JNA) and Commander of all Serb forces – including JNA, Territorial Defence and paramilitary forces – in the Vukovar area at the time, was sentenced by the ICTY to prison for 20 years for aiding and abetting the murder, torture and cruel treatment of 194 non-Serb prisoners of war taken from a hospital in Vukovar after the Croatian city fell to JNA and Serb paramilitary forces in November 1991.

Convicted of aiding and abetting the cruel treatment of prisoners, Veselin Šljivancanin, who served as a JNA major at the time, was sentenced to five years' imprisonment.

Meanwhile, Miroslav Radic, a third JNA member who was indicted along with the two others, was acquitted of all charges. See <http://www.un.org/icty/pressreal/2007/pr1185e.htm>. On 12 December however, the ICTY appeals chamber granted Veselin Šljivancanin provisional release from jail pending the hearing of his appeal based on the fact that he has already served nearly 90 per cent of his sentence. He must remain within Serbia, surrender his passport to police and he is not allowed to discuss the case with the media nor interfere in any way with victims or witnesses.

On 16 October 2007, the ICTY's Appeals Chamber upheld the acquittal of Sefer Halilović, a former deputy army commander for the Bosnian Muslim forces during the Balkan wars on charges related to a massacre of 13 Bosnian Croat civilians in September 1993. The prosecutors alleged that he was the commander of a military operation that led to the killings of civilians in the village of Grabovica. But the Appeals chamber said prosecutors had failed to show that it was not reasonable of the trial chamber to find that Mr. Halilović did not have the required degree of “effective control” over the troops to establish his superior responsibility under the law. See <http://www.un.org/icty/latest-e/index.htm>.

On 31 October 2007, the ICTY's Appeals Chamber has upheld a 15-year prison term for Dragan Zelenović, former Bosnian Serb soldier who pleaded guilty, in January 2007, to charges of torture and rape of Bosnian Muslims in the Foča municipality during the Balkan wars of the 1990s. The Tribunal's Appeals Chamber yesterday unanimously dismissed all grounds of appeal filed by Dragan Zelenović against the Trial Chamber's sentencing

judgment of April 2007 and thereby rejected his request to lower the sentence. This judgement concludes the last case before the Tribunal specifically focused on crimes committed in Foca after the take-over of the municipality by Serb forces in April 1992. The Tribunal has previously convicted three persons for the rape, torture and enslavement of Bosnian Muslim women and girls and one person for the persecution, torture and murder of non-Serb men held in the KP Dom detention camp. Four other accused were transferred to Sarajevo for trial before the War Crimes Chamber of the Court of Bosnia and Herzegovina. See <http://www.un.org/icty/latest-e/index.htm>.

On 14 November 2007, a third witness has been charged with contempt of court for having failed to appear, without just cause, before the ICTY during the trial of Ramush Haradinaj, the former prime minister of Kosovo charged for murder, rape, torture, abduction, cruel treatment, harassment and the deportation or forcible transfer of civilians. See <http://www.un.org/icty/pressreal/2007/pr1197e.htm>.

On 28 November 2007, Belgian Serge Brammertz, currently serving as Commissioner of the International Independent Investigation Commission (IIIC) examining the February 2005 assassination of former Lebanese Prime Minister Rafiq Hariri and other killings in the country, was appointed, by the UN Security Council (UNSC), Prosecutor for the ICTY for a four-year term starting on 1 January. The term of Mr. Brammertz, who will replace Ms. Carla Del Ponte, could be terminated earlier by the UN Security Council if the ICTY is able to complete all trials at first instance by the end of next year and all work, including appeals, by 2010. See <http://www.un.org/News/Press/docs//2007/sc9179.doc.htm> and below.

Departing prosecutor, Ms Carla Del Ponte laments, on 10 December 2007 at UN Headquarters, Serbia's failure to arrest Ratko Mladic and Radovan Karadžić. They are two of only four men out of 161 initial indictees who are still at large. She told reporters that it was vital that Council members not "close the door" on the Tribunal until Mr. Mladic and Mr. Karadžić are brought to justice. She urged the European Union to make the arrest of Mr. Mladic a condition of Serbia's process of accession to the continental bloc. Serbia's representative, Pavle Jervremovic, said the four remaining fugitives would be located and apprehended in the near future, and that authorities in his country had recently taken steps to improve their cooperation with the Tribunal on issues ranging from witness access to production of documents. See <http://www.un.org/icty/pressreal/2007/pr1202e.htm>.

On 12 December 2007, Dragomir Milošević, former Bosnian Serb army general who commanded much of the prolonged siege of Sarajevo has been sentenced to 33 years in prison. He was found guilty of five counts of inflicting terror (war crime) murder and committing inhumane acts (crimes against humanity) and acquitted him on two charges of unlawful attacks against civilians. In one of the most notorious incidents during the siege, Bosnian Serb forces fired mortar shells at Sarajevo's Markele Market on 28 August 1995, killing 34 civilians and wounding 78 others.

The Trial Chamber found that Milošević "abused his position and that he, through his orders, planned and ordered gross and systematic violations of international humanitarian law. Moreover, the Accused made regular use of a highly inaccurate weapon with great explosive power: the modified air bomb." The Trial Chamber considered the repeated use of this weapon to be an aggravating factor in reaching its judgement stating that by using modified air bombs, Milošević was playing with the lives of the civilians of Sarajevo. Mr. Milošević's predecessor as head of the forces laying siege to Sarajevo, Stanislav Galic, has already been convicted by the ICTY in 2003 and sentenced to life in prison. See <http://www.un.org/icty/pressreal/2007/pr1205e.htm>.

Concerning the International Criminal Tribunal for Rwanda (ICTR), on 18 October 2007, Mr. Ntawukuriryayo, the sub-prefect of Gisagara in the southern Rwandan province of Butare in 1994 who faces charges of genocide, complicity in genocide, and directly inciting the public to carry out the genocide over a notorious massacre in which up to 25,000 Tutsis were killed over a five-day period, has been arrested by the French authorities. See UN press release of 18 October 2007.

On 16 November 2007, Juvénal Rugambarara, the mayor of Bicumbi commune in Kigali-Rural Prefecture in Rwanda from September 1993 to late April 1994, was sentenced to 11 years in jail for his role in the mass killings that engulfed the country in 1994. As stated in former Newsletter, Juvénal Rugambarara pleaded guilty to one count of extermination as a crime against humanity after prosecutors agreed to withdraw eight other charges. See UN press release of 16 November 2007.

On 27 November 2007, the ICTR confirmed 25-year jail term for Rwandan ex-Army Officer, Aloys Simba found guilty of two counts of genocide and extermination as a crime against humanity. Mr. Simba was convicted in 2005 over his participation in the massacre of Tutsis at Murambi Technical School and Kaduha Parish in the Gikongoro prefecture on 21 April 1994. See UN press release of 27 November 2007.

On 28 November 2007, a five-member appeal panel at the ICTR reduced the jail sentences of Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze, three former media executives convicted for inciting their compatriots to kill ethnic Tutsis. All three men, in what has been dubbed "the media case", were found guilty of committing genocide, incitement to genocide, conspiracy, crimes against humanity, extermination and persecution. They were the first cases of their kind since the Allied Tribunal at Nuremberg at 1946 sentenced Nazi publisher Julius Streicher to death for his anti-semitic publication "Der Stürmer". At their trial in 2003, Mr. Nahimana, founder and ideologist of the Radio Télévision Libre des Mille Collines (RTLM) – which became known to some Rwandans as "Radio Machete" – and Mr. Ngeze, chief editor of "Kangura" newspaper, were sentenced to life in prison. Mr. Barayagwiza, a high-ranking board member at RTLM and the founder of the Coalition for the Defence of Republic (CDR), a political party, received a 35-year jail term. But the appeal judges said that because of the cancellation of certain findings of culpability against the three men, their jail terms should be reduced: Mr. Nahimana must now serve 30 years, Mr. Ngeze 35 years and Mr. Barayagwiza 32 years. See <http://69.94.11.53/default.htm>.

On 3 December 2007, ICTR sentenced a former witness to nine months in prison for giving false testimony during the trial of the country's former higher education minister, Jean de Dieu Kamuhanda, serving concurrent life sentences after being convicted of genocide and extermination for his role in the mass killings that engulfed Rwanda in 1994. It is the Tribunal's first prosecution for contempt of court and for giving false testimony. See UN press release of 3 December 2007.

On 7 December 2007, François Karera, former Rwandan provincial leader of Kigali-Rural Prefecture between April and July 1994, has been sentenced to life-prison by a three-judge panel at the ICTR after finding him guilty of three counts of genocide and crimes against humanity for its role in ordering, instigating and encouraging attacks by Hutu militiamen and soldiers against Tutsis in his prefecture, including the massacre of hundreds of Tutsis who had sought refuge in a church. The judges said that in determining the appropriate sentence for Mr. Karera, they "took into account in particular his position of authority and the number of victims who were killed at Ntarama Church." See <http://69.94.11.53/ENGLISH/PRESSREL/2007/542.htm> and http://www.publicinternationallaw.org/warcrimeswatch/archives/wcpw_vol03issue08.html#cam1.

(Laurence De Graeve)

SPECIAL COURT FOR SIERRA LEONE³

On 9 October 2007, the two former leaders of Sierra Leone's Civil Defence Forces (CDF) militia have received prison sentences following their convictions in August for war crimes committed during the country's prolonged civil war in the 1990s. Moinina Fofana, who was convicted on charges of murder, cruel treatment, pillage and collective punishments, was given a six-year prison term by the SCSL. Allieu Kondewa, who was convicted on the same charges and also on a count of recruiting child combatants, received an eight-year

³See generally <http://www.sc-sl.org>.

sentence. The case against a third accused CDF leader, Sam Hinga Norman, ended after he died in February. See <http://www.sc-sl.org/Press/pressrelease-100907.pdf>.

(Laurence De Graeve)

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (ECCC)⁴

On 15 November 2007, judges at the ECCC trying Khmer Rouge leaders accused of mass killings and other crimes three decades ago have decided to place Ieng Sary, who was foreign minister under the Khmer Rouge in the late 1970s, and his wife Ieng Thirith, who served as social affairs minister under the same regime, who have been brought to the Court's facilities in Phnom Penh, in provisional detention for a year while they await trial. Mr. Ieng faces charges of crimes against humanity and war crimes while Madame Ieng Thirith is charged with crimes against humanity. See <http://www.eccc.gov.kh> and UN press release of 15 November 2007.

On 19 November 2007, Khieu Samphan, who served as president of Democratic Kampuchea, as Cambodia was then known, between 1976 and 1979, has been arrested and brought before the court for crimes against humanity and war crimes. Mr. Samphan, who has been placed in provisional detention by the co-investigating judges of the ECCC, becomes the fifth person to be brought before the tribunal. See <http://www.eccc.gov.kh> and UN press release of 19 November 2007.

On 3 December 2007, the pre-trial chamber of the ECCC dismissed Mr Kaing Guek Eav's appeal to be released from provisional detention pending his trial. His lawyers had argued that his more than eight years of pre-trial detention violated his human rights and appealed for bail. Also known as Duch, Mr. Kaing, 66 year-old, was charged in July with crimes against humanity over his role as chief at the S21 prison in Phnom Penh during the Khmer Rouge's rule in the 1970s, when hundreds of thousands of people were killed or died from starvation, forced labour and ill treatment. See <http://www.eccc.gov.kh/english/default.aspx> and http://www.publicinternationallaw.org/warcrimeswatch/archives/wcpw_vol03issue08.html#cam1

(Laurence De Graeve)

HARIRI TRIBUNAL

The head of the UN probe into the assassination of former Lebanese prime minister Rafiq Hariri, Serge Brammertz told UN Security Council on 5 December that he is "more confident and optimistic than ever that the investigation can be concluded successfully," explaining that his team has been able to answer many key questions regarding the February 2005 attack, including the possible motive, the identity of the suicide bomber and details about the persons who conducted active surveillance on Mr. Hariri ahead of the attack. Serge Brammertz – who will step down later this month (see above) and will be succeeded as investigation chief of the International Independent Investigation Commission (IIIC) by Daniel Bellemare of Canada, can although not predict when the investigations would be wrapped up.

Mr. Brammertz also said that investigations so far suggest that "some operational links exist" between the various attacks being probed by the Commission. See UN press release of 5 December 2007.

(Laurence De Graeve)

EUROPEAN COURT OF HUMAN RIGHTS

Tangiyeva v. Russia

(29 November 2007). This case concerned the deaths of three relatives (mother, father, and uncle) of the applicant who were allegedly killed by Russian troops in Grozny in January 2000. The court held that the applicant had provided sufficient evidence to prove that her relatives had been killed by Russian troops and that the Russian government had failed to

⁴ See generally <http://www.eccc.gov.kh>.
http://www.justiceinitiative.org/db/resource2?res_id=103814.

See also

provide any satisfactory or convincing explanation to the contrary. Therefore, the Court held that there had been a violation of Article 2 (right to life) concerning the death of applicant's three relatives. It also held that there had been a further violation of Article 2 concerning the authorities' failure to carry out an effective investigation into the circumstances of the deaths. However, it held that there had been no violation of Article 3 (prohibition of torture, inhuman or degrading treatment) concerning the applicant (although it was recognised that the death of her father, mother and uncle caused her profound suffering). Further, it was held that there had been a violation of Article 13 (right to effective remedy); and that there had been an Article 38 s.1(a) failure (obligation to furnish necessary facilities for examination of the case) due to the Russian government's refusal to provide a complete copy of the investigation file.

(Operational Law Branch, Land Warfare Centre, Warminster, United Kingdom)

Kukayev v. Russia

(15 November 2007). The court unanimously held that there was a violation of Article 2 (right to life) regarding the disappearance and death of the applicant's son; that there was a further violation of Article 2 concerning the authorities' failure to carry out an adequate and effective investigation in the same and that there was an Article 3 violation on account of the mental suffering endured by applicant because of the son's disappearance and the lack of effective investigation. Yet further it was held that there had been an Article 13 violation in response to alleged violations of the Article 2 and that was a failure to comply with Article 38 s 1(a) in that Russia refused to submit documents requested by the Court. Russia was ordered to pay €49,150 to the applicant.

(Operational Law Branch, Land Warfare Centre, Warminster, United Kingdom)

National Developments

UNHCHR Concerned over Civilian Deaths in Afghanistan

On 20 November 2007, Louise Arbour, the UN High Commissioner for Human Rights, expressed concern over the high number of civilian casualties caused by both insurgent activities and international military operations in Afghanistan and urged that measures be taken to avoid the loss of innocent life. She was reassured that there has been a "sober realisation" by ISAF commanders of this concern and a willingness to address the issue in a constructive way. However, she said that the major sources of insecurity in the country stem from human rights violations or the failure to effectively address the violations of the past. See <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/8FA97A1314FB08B5C1257399005990A3?opendocument> and UN press release of 20 November 2007.

(Frederik Naert, KULeuven)

Afghanistan Puts an End to Moratorium on Death Penalty Observed for Three Years

On Sunday 7 October 2007, fifteen convicted prisoners were executed by the Afghan authorities, therefore putting an end to the moratorium on death penalty observed for 3 years by these authorities. These executions have made many comments arise by the international community. Mrs L. Arbour, High Commissioner for Human Rights, has urged Afghanistan to reinstate moratorium on death penalty in a press release dated from 9 November 2007 (see www.unhchr.ch/hurricane/hurricane.nsf/view01/422AD3EB132EF9E1C125736F00521472?opendocument). Also, M. T. Koenigs, the Special Representative of the UN Secretary-General for Afghanistan, said the United Nations has expressed its concerns on many occasions about the use of the death penalty and the UN Assistance Mission in Afghanistan has been a staunch supporter of the moratorium on executions observed in Afghanistan in recent years (see www.unama-afg.org/news/statement/SRSG/2007/English/07oct08-print.html).

Furthermore, these executions have been criticised by Troop Contributing Nations to ISAF opposed to death penalty. Indeed, in the framework of the ISAF activities, these Nations transfer prisoners to the Afghan Government in line with its sovereign right to judge the

authors of criminal acts that have taken place on its territory. Yet, ISAF Troops contributing Nations cannot run the risk to see the by them handed-over detainees being sentenced to death and executed as this would be in complete contradiction with their international commitments regarding the abolition of the death penalty. However, the Afghan authorities reported that no Taliban or Al-Qaeda fighters were among the prisoners. In addition, some of these States concluded with the Afghan Government international agreements regarding the treatment of transferred prisoners, specifically excluding any execution of these persons (see for the Netherlands, <http://www.minbuza.nl/nl/actueel/nieuwsberichten.2007/10/Nederland-praat-met-Afghanistan-over-executies.html>).

Since the end of the Taliban regime in 2001, it is the second time that death penalty is applied in Afghanistan. The moratorium on death penalty was indeed broken for the first time when President Karzai authorised, on 20 April 04, the execution of Abdullah Shah, a militia commander convicted on 20 counts of murder (see <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1050510466612> and <http://deathpenaltyinformation.blogspot.com/2007/10/afghanistan-3-year-moratorium-on.html>).

The Afghan Constitution adopted in 2004 retains the death penalty and the Afghan Courts continue to hand down the death sentence in some cases. However, all death sentences require the approval of the President (see <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1050510466612>).

(Elodie Cornez)

Amnesty International Publishes a Report Concerning the Transfer of Detainees to the Afghan Authorities in the Framework of ISAF

In a report published on 13 November 07, Amnesty International states that it has received reports of torture, other ill-treatment, and arbitrary detention by Afghanistan's intelligence service, the National Directorate of Security (NDS) and raises the question of the complicity of the International Security and Assistance Force (ISAF) for these acts as the Troop Contributing Nations to ISAF hand over detainees to the Afghan authorities (see for the complete report [http://web.amnesty.org/library/pdf/ASA110112007ENGLISH/\\$File/ASA1101107.pdf](http://web.amnesty.org/library/pdf/ASA110112007ENGLISH/$File/ASA1101107.pdf) and for a summary <http://web.amnesty.org/library/Index/ENGASA110112007>).

In his answer to a parliamentary question relating to the respect of International Humanitarian Law by the Belgian members of ISAF in Afghanistan raised as a consequence of the publication of this report, M. K. De Gucht, Belgian Minister of Foreign Affairs, indicated that the detainees handed over by the Belgian armed Forces present in Afghanistan as part of ISAF were monitored by both the Belgian authorities on stage and the ICRC. He also underlined that in order to obtain guarantees as regards the respect of Human Rights, Belgium has proposed to the Afghan authorities the conclusion of a Memorandum of Understanding (MoU). This MoU aims at preventing the use of torture and authorising regular visits. He further mentioned that Belgian armed Forces as part of ISAF act in the respect of both the common Article 3 of the four Geneva Conventions and the guidelines elaborated by NATO relating to the procedures for detention, hand-over and monitoring of the detainees. He therefore concluded that the Amnesty International's recommendation to declare a moratorium on any further transfer of detainees to the Afghan authorities does not seem to be justified and added that hand-over to the Afghan authorities are conform to international law and there would exist no reason to depart from it (see <http://www.lachambre.be/doc/CCRA/pdf/52/ac027.pdf>, p. 24, question n°377 in French and Dutch).

(Elodie Cornez)

Austria adopts national law banning cluster munitions

Following the example of Belgium, Austria announced at the Vienna Conference on cluster munitions held from the 5th to the 7th of December, that the parliament approved on a comprehensive ban on cluster munitions with immediate effect and destruction of stockpiles within three years.

For more information see:

- <http://www.iht.com/articles/ap/2007/12/06/europe/EU-GEN-Austria-Cluster-Bomb-Ban.php>

(Isabelle Heyndrickx)

Canadian Inquiry after Death by Taser

Canada ordered an inquiry into the use of Tasers after a video was broadcast showing an unarmed man in agony after being zapped with a stun gun by the Royal Canadian Mounted Police. The man died soon after. See *The Economist*, 'Politics this week', 17th - 23rd November 2007.

(Frederik Naert, KULeuven)

Developments in the DRC

On 13 November 2007, the UN peacekeeping mission in the Democratic Republic of the Congo welcomed the conviction and sentencing of Agenonga Ufoyuru, alias Kwisha, a former rebel militia member, over the murder of two UN observers (Swafat Oran of Jordan and Davis Banda of Malawi) in Mongwalu, in the northeast of the country, on 12 May 2003. Kwisha was sentenced to life in jail by a military tribunal in the eastern city of Bunia. Four others were also convicted. See UN press release of 13 November 2007.

Meanwhile, Yakin Ertürk, the UN Special Rapporteur on violence against women, its causes and consequences has reported that the scale and brutality of the sexual violence currently faced by women in the DRC amounts to war crimes and crimes against humanity. See UN press release of 26 October 2007.

(Frederik Naert, KULeuven)

Complaints against Rumsfeld Dismissed in France

On 26 October 2007, a number of human rights organisations filed a complaint with the Paris Prosecutor charging former US Secretary of Defense Donald Rumsfeld with ordering and authorising torture while he was in Paris for a talk. On 16 November 2007, the prosecutor wrote that he would not investigate the case as the French Foreign Office had stated that as a former Minister Rumsfeld continued to enjoy immunity for official acts. See FIDH, CCR, ECCHR and LDH press release of 26 October 2007; *Sentinelles* Nos. 124 and 127 of 28 October and 25 November 2007; <http://www.fidh.org/spip.php?article4829> and <http://www.fidh.org/spip.php?article4831>.

(Frederik Naert, KULeuven)

Iraq – Blackwater Affair

The September 2007 incident in which personnel of Blackwater (a private security firm working for the US) allegedly killed innocent civilians (see previous issue of this *Newsletter*) has given rise to renewed debate over the regulation of such companies. Various measures have been adopted already in response, including a memorandum of agreement between the US departments of State and Defense (see <http://www.nimj.com/documents/DoS-DoD%20Agreement%20on%20PSCs.pdf>) and proposals for legislation in the US. See also <http://www.legaltalknetwork.com/modules.php?name=News&file=article&sid=232>.

Furthermore, on 25 September 2007, the UN Working Group on the use of mercenaries (see also *supra*) expressed its concern over the 16 September "indiscriminate" shooting in a Baghdad neighbourhood involving a foreign private security company. The experts noted that immunity agreements or decrees may lead to impunity and stressed Member States' responsibilities under international law to effectively regulate and control the behaviour of private military and security guards. See UN press release of 25 September 2007 and See

<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/B78BC375A4E7C76DC125736100598326?opendocument>. Please note that the forthcoming 2007 volume of the Society's Review will include a special issue on private security companies.

(Frederik Naert, KULeuven)

Italian Judge Suspends Trial of CIA Agents

On 31 October 2007, an Italian judge extended the suspension of the abduction trial of 26 Americans charged in an alleged CIA operation until the country's highest court rules on a government challenge in the case. The suspects are accused of kidnapping an Egyptian terror suspect from Milan on 17 February 2003 in an operation coordinated by the CIA and Italian intelligence. See A. Roberts, 'Italian Judge Suspends CIA Trial', The Associated Press, 31 October 2007.

(Frederik Naert, KULeuven)

News Zealand Military Justice Legislation

In New Zealand, the Court Martial Act 2007 and Court Martial Appeals Amendment Act 2007 have received royal assent. See http://www.parliament.nz/NR/rdonlyres/AB3BC935-1177-4F66-9D85-DA6B8B257B7F/69272/DBHOH_BILL_8324_54499.pdf and http://www.parliament.nz/NR/rdonlyres/7D4BC6C2-97C9-45A0-BD87-F69B6233C1F0/69094/DBHOH_BILL_8326_54499.pdf (reported by the NIMJ on 22 November 2007). See also the article in the Review 2006 on the antecedents of these developments.

(Frederik Naert, KULeuven)

Russia suspends participation in CFE Treaty

The Treaty on Conventional Armed Forces in Europe (or CFE Treaty), signed in Paris on November 19, 1990, by the 22 members of NATO and the former Warsaw Pact, was a landmark arms control agreement that established parity in major conventional forces and armaments between the old eastern bloc and Western Europe. It provided an unprecedented basis for lasting European security and stability. The original CFE Treaty (which is of unlimited duration) entered into force in 1992. Following the demise of the Warsaw Pact and the enlargement of NATO in the 1990s, the then 30 CFE States Parties signed the Adaptation Agreement at the Istanbul OSCE Summit on 19 November 1999, to amend the CFE Treaty to take account of the evolving European geo-strategic environment. The Adapted CFE Treaty however, never entered into force, following the refusal of the USA and other NATO members stating that Moscow first must fulfill obligations to withdraw forces from Georgia and from Moldova's separatist region of Trans-Dniester.

Now, taking effect on the 12th of December 2007, Putin has signed a law suspending Russia's participation in the CFE Treaty. Under the moratorium, Russia will halt NATO countries' inspections and verifications of its military sites and will no longer be obligated to limit the number of conventional weapons deployed in the west of the Urals.

For more information see:

- <http://www.iht.com/articles/ap/2007/11/30/europe/EU-GEN-Russia-Arms-Treaty.php>
- <http://news.bbc.co.uk/2/hi/europe/7082501.stm>

(Isabelle Heyndrickx)

Sri Lankan Blue Helmets in Haiti Repatriated on Disciplinary Grounds

On 2 November 2007, the UN announced that it would repatriate 108 Sri Lankan peacekeepers serving with the UN Stabilisation Mission in Haiti (MINUSTAH) on disciplinary grounds, with the cooperation of Sri Lankan authorities (which dispatched a high-level national investigative team) and following the receipt of a preliminary report by the UN Office of Internal Oversight Services (OIOS) in response to allegations of sexual exploitation and abuse. See UN press release of that day and <http://www.un.org/News/Press/docs/2007/sgsm11254.doc.htm>.

(Frederik Naert, KULeuven)

Darfur: AMIS Peacekeepers Attacked and Obstacles to Hybrid Peace Force

On 29 September, an AMIS base was attacked and overrun in Haskanita, Darfur (Sudan), with 10 AU peacekeepers being killed and others wounded or missing, in the worst attack on AMIS so far. The attack was strongly condemned, including by the UN Security Council. See e.g. UN Doc. S/PRST/2007/35 (<http://www.un.org/News/Press/docs//2007/sc9135.doc.htm>) and UN press releases of 30 September and 2 October 2007. See also J. Gettleman, 'Darfur Rebels Kill 10 in Peace Force', *New York Times*, 1 October 2007.

In the mean time, the hybrid UN-AU peace force for Darfur (UNAMID) is facing obstacles to its deployment, including by the Sudanese Government, and is still missing key capabilities. See e.g. UN press releases of 8 October and 9, 14 and 27 November 2007. Nevertheless, it has started its deployment and first operations in El Fasher on 31 October 2007, see UN press release of that day.

On 31 December 2007 the Joint United Nations / African Union Mission (UNAMID) has formally taken over from AMIS and the personnel changed their head gear to the UN blue berets. The transfer of authority took place in accordance with the timeline specified in UN Security Council Resolution 1769 of 31 July 2007. See <http://unamid.unmissions.org/Default.aspx?tabid=55&ctl=Details&mid=376&ItemID=25>.

(Alfons Vanheusden)

Developments in the UK

On 12 December, the House of Lords handed down an important ruling in the case *R (on the application of Al-Jedda) (FC) (Appellant) v Secretary of State for Defence (Respondent)*. The case concerns detention by UK forces in Iraq (post occupation), in particular the question whether such conduct is attributable to the UK or to the UN (compare the ECtHR's May 2007 decision in the *Behrami & Saramati* cases concerning Kosovo – summarised in the 2007/2 issue of this *Newsletter*) and the impact of articles 25 and 103 UN Charter on articles 5 (and 15) ECHR. It is particularly important for peace operations and detention in such operations. The court dismissed the appeal against the detention. The text of the judgment is available at <http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd071212/jedda-1.htm>.

On 1 November 2007, London's Metropolitan Police force was found guilty of putting the public at risk during a counterterrorism operation on 22 July 2005 that led to the killing of an innocent Brazilian electrician (Mr. de Menezes) on a subway train. The Metropolitan Police force was fined \$364,000 and \$800,000 in legal costs for breaching health and safety laws as police officers pursued and killed the man, who they thought was a suspect in a failed suicide bombing attempt. See J. Werdigier, 'Carelessness by London Police Cited in '05 Killing', *New York Times*, 2 November 2007.

On 31 October 2007, the House of Lords handed down several judgments in cases concerning "control orders" on suspected terrorists, upholding the overall system but rejecting the power of the Home Secretary to adopt certain control orders that amount to a deprivation of liberty. For the text of the judgments, see <http://www.publications.parliament.uk/pa/ld/ldjudgmt.htm>. See also N. Morris, 'Law Lords Rule that Terror Suspects' Curfews Are "Virtual Imprisonment"', *The Independent*, 1 November 2007, <http://news.independent.co.uk/uk/legal/article3115519.ece>.

On 30 November 2007, the Proscribed Organisations Appeal Commission ordered the UK Secretary of State to lay before Parliament the draft of an Order under section 3(3)(b) of the Terrorism Act removing the People's Mojahadeen Organisation of Iran from the list of proscribed organisations in Schedule 2 of that Act. See <http://www.siac.tribunals.gov.uk/poac/Documents/outcomes/PC022006%20PMOI%20FINAL%20JUDGMENT.pdf>.

(Frederik Naert, KULeuven)

US developments

On 9 October 2007, the Supreme Court refused to hear an appeal by Khaled el-Masri, who claims he was detained by the US for five months in 2003, having been mistaken for a terrorism suspect with a similar name, thereby upholding an appeals court ruling that the

state secrets privilege protected the government's actions from court review. See L. Greenhouse, 'Supreme Court Refuses to Hear Torture Appeal', *New York Times*, 10 October 2007.

On 25 October 2007, the US designated the Islamic Revolutionary Guard Corps (IRGC) (also called the Iranian Revolutionary Guard Corps), the Ministry of Defense and Armed Forces Logistics (MODAF), and three Iranian banks as supporters of terrorism pursuant to Executive Order 13382 of 29 June 2005 and UN Security Council Resolution 1737. This designation will prohibit financial transactions involving any of the named organisations and will freeze all of their assets in the US. See *ILIB* of 31 October 2007 and <http://www.state.gov/r/pa/prs/ps/2007/oct/94193.htm>.

In the margins of the November 2007 Conference of the Red Cross and Red Crescent, John Bellinger, legal adviser at the US State Department, said the US should make clearer what it permits during interrogation and what it does not and said he was making confidential recommendations and his own "strong views" on the matter to US Attorney-General Michael Mukasey. See Reuters, 'Top State Dept Lawyer Seeks U.S. Clarity on Torture', 27 November 2007.

(Frederik Naert, KULeuven)

On 5 December 2007, the US Department of Defense (DoD) and Department of State (DoS) signed a Memorandum of Agreement (MOA) regarding control and regulation of private security contractors (PSCs) working for the US government in Iraq. Though the agreement does not achieve all previously stated DoD goals regarding USG PMCs employed by agencies other than DoD, it does provide for greater movement coordination and control, serious incident response and investigation, use of force and accountability. The last line of the agreement is a provision for the DoD and DoS to work together to expedite legislation to clarify the legal basis for holding USG PSCs in Iraq accountable under US law.⁵

Among the specific provisions of the MOA are rules on the use of force which permit PSCs to retain the inherent right of self-defence in response to hostile act or demonstrated hostile intent. Deadly force is authorised in defence of others when there is a reasonable belief of imminent risk of death or serious bodily harm. The MOA provides definitions of imminent threat (based on assessment of all the facts and circumstances known to the PSC at the time and does not necessarily mean immediate or instantaneous); hostile act (attack or other use of force against the PSC, designated persons or property including force used directly to preclude or impeded the mission and/or duties of the PSC); hostile intent (imminent threat of the use of force against the PSC, or designated persons or property); de-escalation (time and circumstances permitting, the threat should be warned and given a opportunity to withdraw or cease threatening actions); non-deadly force (use of force must be reasonable in intensity, duration and magnitude based on the totality of the circumstances to counter the threat); and use of deadly force (self-defence, defence of others, assets vital to national security, inherently dangerous property, well-aimed shots with due regard to innocent bystanders, and no offensive operations). The list above is only a partial summary of the agreement's provisions - there are other provisions regarding incident response and investigation, commonality on contract language and ammunition types used.

(Operational Law Branch, Land Warfare Centre, Warminster, United Kingdom)

INTERESTING PUBLICATIONS

The new Handbook of International Humanitarian Law, edited by our Honorary President Dr. Dieter Fleck, has been launched. Oxford University Press has kindly offered a price reduction for members of the Society until 8 March 2008. This reduction is valid for individuals and for

⁵ Currently, PSCs employed directly by the US Military can be held accountable for alleged criminal acts under the Military Extraterritorial Jurisdiction Act (MEJA) 2000 and its implementing regulations. See OLB Newsletter, October 2006 for report on former US soldier being tried using MEJA as basis for jurisdiction as well as a CIA contractor held accountable under USA Patriot Act for crimes committed overseas.

institutions. Further details on this book can be found at <http://www.oup.com/uk/catalogue/?ci=9780199232505>.

David BLUMENTHAL & Timothy McCORMACK, *The Legacy of Nuremberg: Civilising Influence or Institutionalised Vengeance ?*, Martinus Nijhoff, December 2007, 360 pp., ISBN 978 90 04 15691 3 (HB)

Andrew CLAPHAM, *Human Rights Obligations of Non-State Actors*, Oxford University Press, 2006, 648 pp., ISBN 978-0-19-829815-1 (HB)

Eric DAVID, Françoise TULKENS & Damien VANDERMEERSCH, *Code de Droit international humanitaire*, 3^e éd., Bruylant, 2007, 923 pp., ISBN 978-2-8027-2424-7

Mark DRUMBL, *Atrocity, Punishment and International Law*, Cambridge, July 2007, ISBN-13 978-0521-8708-94 (HB) & 978-0521-6913-83 (PB)

Gérard ISRAËL, *René Cassin (1887-1976). La guerre hors la loi. Avec de Gaulle. Les droits de l'homme*, Bruylant, 2007, 292 pp., ISBN 978-2-8027-2410-0

Charles JALLOH, *Consolidated Legal Texts of the Special Court for Sierra Leone*, Martinus Nijhoff, November 2007, 400 pp., ISBN 978 90 04 16183 2 (HB)

Boris KONDOCH, *International Peacekeeping*, Ashgate, August 2007, 582, 978-0-7546-2396-3 (HB) *

Ruth KOK, *Statutory Limitations in International Criminal Law*, Cambridge University Press, December 2007, 462 pp., ISBN-13 978 906 704137 6 (HB)

Cyril LAUCCI (ed.), *The Annotated Digest of the International Criminal Court 2004-2006*, Martinus Nijhoff, September 2007, 700 pp., ISBN 978 90 04 16311 9 (HB)

David McDONALD, Robert PATMAN & Betty MASON-PARKER (eds.), *The Ethics of Foreign Policy*, Ashgate, July 2007, 222 pp., ISBN 978-07546-4377-7 (HB)

Marie-Denise MEOUCHY TORBEY, *L'internationalisation du droit pénal. Le Liban dans le monde arabe*, Bruylant, 2007, 504 pp. + CD Rom, ISBN 978-2-8027-2369-1

Faustin Z. NTOUBANDI, *Amnesty for Crimes against Humanity under International Law*, Martinus Nijhoff, November 2007, 350 pp., ISBN 978 90 04 16231 0 (HB)

Hector OLASOLO, *Unlawful attacks in Combat Situations. From the ICTY's Case Law to the Rome Statute*, Martinus Nijhoff, November 2007, 320 pp., ISBN 978 90 04 16200 6 (HB)

Photine PAZARTZIS, *La répression pénale des crimes internationaux. Justice pénale internationale*, Pédone, 2007, 95 pp., ISBN 978-2-233-00511-3

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