



NEWSLETTER JANUARY/FEBRUARY/MARCH 2008

REF: ISMLLW 2008/1

INTRODUCTION

Dear reader,

Our VIIIth Seminar for Legal Advisors to the Armed Forces has been a great success. It took place in Namibia from 3 to 9 March 2008, with the precious support of the Namibian Ministry of Defence and Armed Forces. Participants from 37 Countries were learning from each other and working together on the theme of *legal advisors in post-conflict operations*. The number of membership applications generated by this event, confirms the enthusiasm of the participants as to the quality of the Society's undertakings.

You have our same commitment in view of our XVIIIth Congress, which will be hosted by the Tunisian authorities in 2009. The Congress will deal with *Practice and Customary Law in Military Operations, including Peace Support Operations*. The more general term *practice* rather than the more narrow one *State practice* has been chosen on purpose, considering the current practice of conduct of military operations under the command of international organisations – like NATO or the European Union – or in coalitions of States, operating within a multinational framework. In addition to identifying the practice as such, the role of the practice of the military forces in the formation of customary international law will be examined. Particular attention will be paid to the means and methods used in the conduct of operations.

The General Secretariat is currently sending out the questionnaire related to the plenary session of the 2009 Congress, to the Society's National Groups and to the various Countries. While the focus in this questionnaire is in part on practice as an element of customary international humanitarian law, specific questions of *opinio juris* and other theoretical or legal questions will be addressed by the General Rapporteurs separately from the summary of the answers to the questionnaire. In part the questionnaire aims to identify practice by other means than those relied on by the ICRC in some areas where the conclusions of the ICRC Study on Customary International Humanitarian Law may not be convincing to all. In this way the questionnaire also wants to contribute to the dialogue on the Study, as called for by the ICRC.

Detailed information on the 2009 Congress will be sent to all National Groups, Countries and members of the Society in due time.

Ludwig Van Der Veken
Secretary-General

NEWS, ANNOUNCEMENTS OF CONFERENCES, SEMINARS, ETC.

The next meetings of the Society's **Managing Board** and **Board of Directors** will take place in Athens (Greece) on 8 and 9 May 2008.

The Belgian Group of the Society will hold a one day **Conference on the Protection of Women and Children during Military Operations**. The conference will take place in the Royal Military Academy in Brussels (Belgium) on 22 April 2008. For more information, please contact the General Secretariat.

(Alfons Vanheusden, Assistant Secretary-General)

The British Red Cross will be organising a short intensive **summer course on International Humanitarian Law (IHL) at Magdalene College, Cambridge**, U.K. from Sunday afternoon, 13 July, to Wednesday lunchtime, 16 July 2008. The course is intended to cover the practical application of the law, as well as the principles and rules, through a series of presentations followed by case studies carried out in groups and plenary discussions.

The following areas will be considered: the history and development of IHL; protection of the wounded, sick and shipwrecked; combatants and prisoners of war; protection of civilians; non-international armed conflicts; human rights and IHL; the "global war on terror"; implementation of IHL; the work of the International Committee of the Red Cross (ICRC). The presenters include current and former British Armed Forces Experts, a specialist from the US Department of Defense, prominent academics and a representative of the ICRC.

Individuals with an interest in IHL are warmly welcomed to attend. Past participants have included university lecturers and students (e.g. of law and of international relations); armed forces officers (operational, legal advisers, and chaplains); government officials (foreign and defence ministries), staff of Non-Governmental Organisations (NGOs); journalists; and National Red Cross/Crescent Society volunteers and staff from outside the UK. The course is offered on a residential basis (i.e. with accommodation in the college included) at a cost of UK£300, or on a non-residential basis at a cost of UK£240.

Interested individuals should please contact Mr Michael Meyer, Head of International Law at the British Red Cross, at mmeyer@redcross.org.uk

(British Red Cross)

The newly created ESIL Interest Group on Peace and Security (IGPS) (<http://igps.wordpress.com/> <<http://igps.wordpress.com/>>) has the pleasure to announce its first Workshop which will take place during the third biennial conference of the European Society of International Law in Heidelberg. The IGPS Coordinating Committee invites the submission of abstracts from ESIL members or other scholars interested in participating in this special workshop.

1. The Theme of the Workshop: "Insurgency and International Law"

The theme of this workshop reflects a number of heated debates in public international law. Earlier practice and recent events, such as the failed attempt of armed rebels to overthrow the Government in Chad, the incursion of Turkish troops into northern Iraq to target PKK militants or the Colombian cross-border raid against the FARC inside Ecuador, provide evidence that the struggle between established governments and insurgent movements can all too often generate regional destabilisation and turn into a threat to peace and security. The objective of this workshop is to examine how various fields of international law deal with insurgent movements. The workshop will also explore whether and to what extent existing rules of international law need to be revisited in order to adequately address the causes and problems of insurgency.

Although this call for papers is open-ended in terms of possible topic submissions, special consideration will be given to proposals in one or more of the following areas:

- The meaning of "insurgency" in international law;

- The legitimacy of insurgent movements and/or Governments that face them;
- The applicability of the "due diligence" rule and the obligations of third States;
- Questions concerning the use of force: self-defence, hot pursuit, invited intervention, etc.;
- Questions concerning the applicability of *jus in bello* rules to insurgent movements;

Case studies will also be considered.

2. Organisation and Publication Options

The Workshop panel will consist of four or five participants and a chairperson. The Languages used will be English and French. The workshop will be held in connection with the main programme of the conference.

The workshop is tentatively scheduled for Thursday afternoon, 4 September. The exact time and venue will be announced at a later stage.

The *Revue Belge de Droit International* has expressed an interest in publishing this workshop. Papers can be published in French or English.

Before publication, all papers will be submitted to peer-review.

3. The Application Process

Papers presented at the workshop will be selected through a competitive process involving the submission of abstracts. The selection process will be based exclusively on the scholarly merits of the submitted proposals. The call is open to all international law scholars. An individual may submit one application only. Each submission should include the following:

A) An abstract of no more than 600 words in English or French specifying the intended language for the paper; and

B) A short CV in English or French including the author's name, institutional affiliation, contact information and e-mail address.

All applications should be submitted to igps@esil-sedi.eu.

The deadline for submission of proposals is Sunday, 20 April 2008.

The outcome of the selection process will be notified to all applicants by Monday, 5 May 2008. After selection, every presenter will be expected to produce by Friday, 4 July 2008 a draft paper of 3,000 words for circulation among the other workshop participants.

The IGPS is pleased to announce that the ESIL conference registration fee will be waived for panelists. Transport and accommodation expenses will have to be borne by the selected participants and/or their host institutions. The IGPS regrets that it is not in a position to offer financial assistance for this workshop.

The IGPS Coordination Committee:

Theodore CHRISTAKIS, University of Grenoble and Sciences-Po Paris, Olivier CORTEN, Free University of Brussels, Jann KLEFFNER, University of Amsterdam, Carsten STAHN, Swansea University and Grotius Centre for Int. Legal Studies, Ralph WILDE, University College London

For further information see: <http://igps.wordpress.com/> <<http://igps.wordpress.com/>>

(ESIL Interest Group on Peace and Security)

Call for Papers for the 2009 Lieber Society Military Prize

The Lieber Society, an interest group of the American Society of International Law, bestows each year, without regard to nationality, a prize for an exceptional writing that enhances understanding of the law of war by a person serving in the regular or reserve armed forces of any nation.

The winner will receive a Certificate confirming that he or she has won a Lieber Society Military Prize and a monetary grant of \$500.00. The judges may also select up to two additional persons to receive Lieber Society Certificates of Merit for exceptional papers.

Any person receiving this Call for Papers who is aware of an exceptional writing that meets the qualifications of this competition is requested to nominate the paper directly to the Lieber Society and forward this Call to the author of that paper.

For this competition, the Law of War is that part of international law that regulates the conduct of armed hostilities. Papers may address any aspect of the law of war, including, but not limited to:

the use of force in international law, the conduct of hostilities during international and non-international armed conflicts, protected persons and protected objects, the law of weapons, rules of engagement, treatment of detainees, to include interrogation procedures, and occupation law. Papers addressing practical problems confronting members of armed forces are preferred.

Persons submitting papers do not have to be ASIL members. They may be citizens of any nation, but they must be a member of, or retired from, his or her nation's regular or reserve armed forces. He or she does not have to be on active duty when the paper was prepared.

Papers submitted in this competition must be in English (or translated into English if written in another language) and not more than 35 pages long if printed with single line spacing or 70 pages if written with double line spacing. Papers that have been published are acceptable for this competition. Papers that have not been published will be equally considered. A condition of considering a paper that has not been published, however, is that the author must give the Lieber Society authority to have the paper published in a journal of the Society's choice.

All submissions must contain the following data on the author of the paper: full name and rank or rating, if any; current postal and e-mail addresses; current telephone and fax numbers. If a person other than the author is making the submission, it must also contain the above data for the person submitting the paper.

Papers for the 2009 competition must be received no later than Friday, 2 January 2009.

Electronic submissions in Adobe format (.pdf) or Microsoft Word (.doc) will be accepted. They should be sent to ckeever@hawaii.rr.com.

Submissions by postal mail must be sent to:

Colonel Charles J. Keever USMC (Ret.)

2176 Aha Niu Place

Honolulu, Hawaii 96821

Tel. & Fax: 808-732-7598

If the postal system is used, two copies of the paper must be submitted.

All submissions will be acknowledged by e-mail.

The winner and any person receiving Certificates of Merit will be announced at the 2009 Annual Meeting of the American Society of International Law.

(Lieber Society)

RECENT DEVELOPMENTS, LEGISLATION & JURISPRUDENCE

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

Wellington conference on cluster munitions

From the 18 to 22 of February 2008, 103 states gathered in Wellington (New Zealand) to participate in the next step of the so-called Oslo Process, that was launched a year ago, to conclude by the end of 2008 a new international treaty banning all cluster munitions that cause unacceptable harm to civilians.

At the end of the conference, 82 states signed the 'Wellington declaration' which provides the draft treaty text to be negotiated and agreed in Dublin in May 2008 to ban cluster munitions, assist survivors and ensure clearance of affected lands.

The most contentious issues continue to revolve around definitions and possible exemptions to the ban for some types of cluster munitions, possible transition periods in which cluster munitions could still be used after being banned, and the use of cluster munitions in joint military operations by states that are not part of the future treaty.

For more information see:

- www.clusterprocess.org
- <http://www.stopclustermunitions.org/news.asp?id=115>
- http://www.lemonde.fr/web/imprimer_element/0,40-0@2-3220,50-1018176,0.html

(Isabelle Heyndrickx)

International Organisations

Developments at the UN Security Council

On 30 January 2008, the Security Council extended the mandate of UNMEE for another six months (UNSC Res. 1798). The Council also demanded that the Eritrean Government lift its restrictions on fuel for UNMEE. However, as Eritrea did not comply, UNMEE's staff in Eritrea temporarily relocated, despite obstructions by Eritrea to this move. See e.g. UN press releases of 19 February and 6 March 2008 and UN Doc. S/2008/145 of 3 March 2008.

The Security Council furthermore extended the mandate of the UN Integrated Office in Sierra Leone (UNIOSIL) until 30 September 2008 (Res. 1793 of 21 December 2007), of the UN Organization Mission in the Democratic Republic of the Congo (MONUC) until 31 December 2008 (Res. 1794 of 21 December 2007), of the UN Mission in Nepal (UNMIN) until 23 July 2008 (Res. 1796 of 23 January 2008), that of the UN Operation in Côte d'Ivoire (UNOCI) and of the French forces which support it until 30 July 2008 (Res. 1795 of 15 January 2008), the authorization of African Union Member States to maintain a mission in Somalia for a further period of six months (Res. 1801 of 20 February 2008) and the mandate of the UN Integrated Mission in Timor-Leste (UNMIT) until 26 February 2009 (Res. 1802 of 26 February 2008) and that of the UN Assistance Mission in Afghanistan (UNAMA) until 23 March 2009 (Res. 1806 of 20 March 2008).

On 3 March 2008 in Resolution 1803, the Security Council adopted further sanctions against Iran over the country's nuclear programme following non compliance with earlier resolutions. Also, on 20 March 2008 in Resolution 1805 it extended the mandate of the Counter-Terrorism

Committee Executive Directorate (CTED), which supports the Counter-Terrorism Committee that is to ensure the full implementation of resolution 1373 (2001).

(Frederik Naert, KU Leuven)

UN Working Group on Mercenaries Says Private Security Companies Lack Oversight and Regulation

On 10 March 2008, the President of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (<http://www2.ohchr.org/english/issues/mercenaries/index.htm>) presented the group's report to the UN Human Rights Council. He *inter alia* expressed concern over the privatization of security and called for greater regulation of private security companies. See UN press release of 10 March and http://www2.ohchr.org/english/issues/mercenaries/docs/StatementHRC_7.doc.

(Frederik Naert, KU Leuven)

OAS Resolution on Colombia – Ecuador Dispute

On 1 March 2008, Colombian military forces and police personnel conducted an operation in the territory of Ecuador against a group of the Revolutionary Armed Forces of Colombia (FARC). This led to a dispute between both countries. On 17 March 2008, the 25th Meeting of Consultation of Ministers of Foreign Affairs of the Organization of American States (OAS) adopted a resolution (RC.25/RES.1/08) which *inter alia* rejected this incursion "carried out without the knowledge or prior consent of the Government of Ecuador, since it was a clear violation of Articles 19 and 21 of the OAS Charter" (§ 4) and reiterated "the firm commitment of all member states to combat threats to security caused by the actions of irregular groups or criminal organizations, especially those associated with drug trafficking" (§ 6). See <http://www.oas.org/consejo/MEETINGS%20OF%20CONSULTATION/rc00107e04.doc> and ILIB of 31 March 2008.

(Frederik Naert, KU Leuven)

International(ised) Courts

ICC¹

On 6 February 2008, Mathieu Ngudjolo Chui, an alleged former leader of the rebel National Integrationist Front (FNI) and current Colonel in the national armed forces of the Democratic Republic of the Congo (DRC), was arrested by the Congolese authorities, upon the request of the Court, and transferred to The Hague by airplane of the Belgian Armed Forces. He is alleged to have played a key role in designing and carrying out a murderous attack on the village of Bogoro, in Ituri, in February 2003. He is facing three counts of crimes against humanity and six counts of war crimes including allegations of sexual slavery and the use of child soldiers. With this arrest the ICC completed the first phase of its DRC investigation concentrated on the horrific crimes in Ituri since 2002.

See <http://www.icc-cpi.int/press/pressreleases/329.html> and <http://www.icc-cpi.int/press/pressreleases/337.html>

On 11 March 2008, the pre-trial chamber of the International Criminal Court (ICC) joined the cases of Germain Katanga and Mathieu Ngudjolo Chui, two rebel leaders facing charges for crimes allegedly committed by their militia groups in the far east of the Democratic Republic of the Congo (DRC) in 2003.

See <http://www.icc-cpi.int/press/pressreleases/347.html>

In March 2008, officials from the International Criminal Court met with a delegation from the Lord's Resistance Army (LRA), the Ugandan rebel group whose leadership (Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen and Raska Lukwiya) is under indictment for war crimes and crimes against humanity allegedly committed since July 2002 during its protracted conflict with Government forces. The LRA delegation and the officials with the ICC registry discussed procedural issues related to the legal representation of the four men from the rebel group who face arrest warrants. Last month representatives of both Kampala

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

and the LRA signed a series of agreements, including a ceasefire that could lead to a permanent agreement ending the deadly war.

See <http://www.icc-cpi.int/home.html&l=en>

On 17 March 2008, Madagascar ratified the Rome Statute that sets up the International Criminal Court. When the statute enters into force for Madagascar on 1 June, the island nation will be the 106th country to become a State Party to the ICC.

(Laurence De Graeve)

ICTY

On 19 December 2007, Portugal entered into an agreement on the enforcement of sentences, which allows for the persons convicted by the Tribunal to serve their sentences in its prisons. This makes Portugal the thirteenth state to accept enforcing sentences, after Ukraine, Belgium, Austria, Denmark, Finland, France, Germany, Italy, Norway, Spain, Sweden, and the United Kingdom.

See <http://www.un.org/icty/pressreal/2007/pr1208e.htm>

On 28 December 2007, the ICTY ordered the arrest of the former Croatian commander, Mladen Markac, accused of murder, persecutions, deportation, inhumane acts and other crimes allegedly committed during his time as Commander of the Special Police of the Ministry of the Interior of the Republic of Croatia. Mladen Markac was provisionally released since December 2004. He has been arrested and transferred to The Hague because he has left his designated residence without permission.

See <http://www.un.org/icty/pressreal/2007/pr1210e.htm>

On 25 January 2008, Vidoje Blagojevic, a former Bosnian Serb army commander convicted by the ICTY to a 15-year jail term over his role in the notorious Srebrenica massacre in 1995, was transferred to Norway to serve the remainder of his prison sentence.

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

In February 2008, for the second time, the ICTY conducted an evidentiary hearing at the Court of Bosnia and Herzegovina in Sarajevo, this time for the testimony of a prosecution witness in the Rasim Delić trial. Mr. Delić is charged with murder, cruel treatment and rape of captured Croat and Serb soldiers and civilians on the basis of his responsibility as Commander of the Main Staff of the Army of Bosnia and Herzegovina from June 1993. The indictment against him states that he failed to take necessary and reasonable action to avoid his troops making such acts.

See <http://www.un.org/icty/pressreal/2008/pr1214e.htm>

On 20 February 2008 the UN Security Council adopted resolution 1800, authorizing the UN Secretary General to appoint up to four *ad litem* judges to the ICTY in order to meet the completion strategy objectives of trying all trials at first instance by the end of this year and all appeals by 2010. On 4 March, three of the four possible additional *ad litem* judges were sworn in: Judge Pedro R. David (Argentina), Judge Michele Picard (France) and Judge Elizabeth Gwaunza (Zimbabwe). On 10 March, Judge Uldis Kinis (Latvia), the last *ad litem* judge authorized by UNSC resolution, was sworn in.

See <http://www.un.org/News/Press/docs//2008/sc9257.doc.htm>

On 27 February 2008, Dragan Zelenović, a former Bosnian Serb soldier, was transferred to Belgium to serve his sentence of fifteen (15) years' imprisonment for torture and rape of women and girls in the town of Foča in Bosnia and Herzegovina during 1992. It is the first time that Belgium, which signed an Enforcement Agreement with the Tribunal last year, hosts an ICTY convict in one its detention facilities.

See <http://www.un.org/icty/pressreal/2008/pr1219e.htm>

On 28 February 2008, Mitar Rašević and Savo Todović, two former guards transferred in October 2006 from the ICTY to the State Court of Bosnia and Herzegovina pursuant to the referral mechanism of Rule 11bis, were convicted of crimes against humanity committed in 1992 at the Foča KP Dom prison. They are sentenced to 8,5 and 12,5 years imprisonment

respectively for their participation in setting up and maintaining a system of punishment and mistreatment of detainees, including the use of forced labour.

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

On 4 March 2008, Radoslav Brdanin, a prominent former Bosnian Serb political figure, convicted of the wilful killing, torture and persecution of non-Serbs, of instigating forcible transfers and deportations from the Krajina region and for his role in the destruction of cities, towns and villages in Bosnia and Herzegovina, has been transferred to detention in Denmark where he will serve the remainder of his 30-year jail term.

See <http://www.un.org/icty/pressreal/2008/pr1222e.htm>

On 11 March 2008, began the trial of three former senior Croatian generals, Ante Gotovina, Ivan Cermak and Mladen Markac, accused of murdering, persecuting and displacing ethnic Serbs during the Balkan conflicts of the 1990s. They are accused of being key members of a joint criminal enterprise – along with four other men, including the former president of Croatia, Franjo Tudjman, to forcibly and permanently remove ethnic Serbs from the Krajina region.

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

On 3 April 2008, the ICTY acquitted former prime minister of Kosovo, Ramush Haradinaj, who was also a well-known commander in the Kosovo Liberation Army (KLA) during the conflict with Serb forces in 1998-99, of charges of war crimes and crimes against humanity. Together with two co-accused persons, Ramush Haradinaj was charged of being part of a joint criminal enterprise between March and September 1998 that aimed to consolidate the KLA's total control over the Dukagjin area in north-western Kosovo by unlawfully removing, mistreating and killing Serbian and Kosovar Roma civilians, as well as Kosovar Albanians perceived to have been collaborating with Serbian forces. The judges found that the evidence presented was sometimes inconclusive as to whether a crime had been committed or, if so, whether the KLA was involved as alleged and said the evidence indicated the victims may have been targeted mainly for individual reasons rather than because they were members of a targeted civilian group. The acts of ill-treatment, forcible transfer and killing were also not of a scale to conclude there was an attack against a civilian population. Idriz Balaj, Mr. Haradinaj's co-accused, was also acquitted of all charges. The third co-accused, Lahi Brahimaj, was convicted of the cruel treatment and torture of two persons at the KLA headquarters in Jablanica/Jabllanicë and has been sentenced to six years in jail.

See <http://www.un.org/icty/pressreal/2008/pr1232e.htm>

(Laurence De Graeve)

ICTR

On 12 February 2008, the Rwandan defence investigator, Léonidas Nshogoza, accused of trying to fabricate evidence and procure false statements for use in the appeal trial of Jean de Dieu Kamuhanda, former higher education minister, appeared before the ICTR for two charges of contempt of the Tribunal and two counts of attempting to commit acts punishable as contempt.

See <http://69.94.11.53/default.htm>

On 19 February 2008, Callixte Nzabonimana, former minister of youth and sports in Rwanda's interim government in 1994, was arrested and transferred to the ICTR. Mr. Nzabonimana is facing eleven charges including genocide, making incitements to commit genocide, conspiracy to commit genocide and violation of the Geneva Conventions. He is jointly charged with six other persons: Augustin Bizimana, Edouard Karemera, Andre Rwamakuba, Mathieu Ndirumpatse, Joseph Nzirorera and Felicien Kabuga.

See <http://69.94.11.53/ENGLISH/PRESSREL/2008/551.htm>

On 28 February 2008, Georges Omar Ruggiu, journalist and presenter at Radio Television Libre des Mille Collines (RTL) who was sentenced to 12 years in prison for direct and public incitement to commit genocide and crimes against humanity, was transferred to Italy where he will serve the remainder of his jail sentence.

See <http://69.94.11.53/ENGLISH/PRESSREL/2008/555.htm>

On 4 March 2008, Vincent Rutaganira, former Rwandan local government official convicted in March 2005 to six years' jail for failing to use his authority to prevent the massacre of Tutsis seeking refuge in a church, has been released from prison after completing his sentence. Mr. Rutaganira had been in custody since he was arrested in March 2002.
See <http://69.94.11.53/>

On 4 March 2008, Rwanda has become the seventh country, after Mali, Benin, Swaziland, France, Italy and Sweden, to sign an agreement to enforce a jail sentence imposed by the ICTR based in Arusha, Tanzania. The ICTR Registrar, Adama Dieng, said Rwanda had made significant progress in ensuring it meets the necessary standard of prisons to accommodate ICTR convicts.
See <http://69.94.11.53/ENGLISH/PRESSREL/2008/557.htm>

On 12 March 2008, the appeals chamber quashed the sentence of 15 years' jail, imposed by the trial chamber of the ICTR in 2006 against Athanase Seromba, a Roman Catholic priest in Rwanda who directed the demolition of a church where about 1,500 Tutsis were trying to take shelter during the 1994 genocide, killing those trapped inside and sentenced him to life in prison. The appeals chamber overturned Mr. Seromba's conviction for aiding and abetting genocide and extermination as a crime against humanity, replacing it with convictions for committing genocide and extermination.
See <http://69.94.11.53/default.htm>

(Laurence De Graeve)

SCSL

On 7 January 2008, the trial of former Liberian President, Charles Taylor, resumed at the UN-backed Special Court for Sierra Leone. Although the trial will be held at the premises of the ICC in The Hague, it will remain under the exclusive jurisdiction of the United Nations-backed Special Court for Sierra Leone (SCSL). Mr. Taylor is facing 11 counts of war crimes, crimes against humanity and other serious violations of international humanitarian law – including mass murder, mutilations, rape, sexual slavery and the use of child soldiers – for his role in the decade-long civil war that engulfed Sierra Leone. Chief Prosecutor Stephen Rapp said *“the case is one of historic importance in signalling an end to impunity of individuals, even at the highest level.”*

The Court's judges have indicated that they will have a judgment at first instance by January 2010, presuming that the evidence is concluded by the end of July 2009.

In July 2007, the Special Court reached an agreement with the British Government whereby Mr. Taylor will serve out his sentence in the United Kingdom if he is convicted.

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

On 22 February, the appeals chamber of the SCSL upheld the long jail sentences it handed down last year to three former rebel leaders of the Armed Forces Revolutionary Council (AFRC), Alex Tamba Brima and Santigie Borbor Kanu, convicted of multiple counts of war crimes and crimes against humanity during the country's brutal civil war in the 1990s. Alex Tamba Brima and Santigie Borbor Kanu are each serving 50-year prison terms and Brima Bazy Kamara is serving 45 years after each being found guilty of 11 charges including committing acts of terrorism, murder, rape and enslavement and conscripting children under the age of 15 into armed groups. The appeals chamber upheld the prosecution's appeal in part on questions concerning the criminality of the act of forced marriage and the issue of joint criminal enterprise, but declined to enter new convictions for the men.

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

(Laurence De Graeve)

ECCC

The United Nations-backed tribunal trying Khmer Rouge leaders accused of mass killings and other crimes is currently processing and responding to more than 500 complaints submitted by Cambodians. The Extraordinary Chambers in the Courts of Cambodia (ECCC) is the first international or hybrid tribunal which involves victims as civil parties, giving them full procedural rights including participation in investigations, representation by a lawyer, the

ability to call witnesses and question the accused, and to claim reparations for the harm they suffered.

On 26 March, in a formal submission to co-investigating judges, the co-prosecutors at the Extraordinary Chambers in the Courts of Cambodia (ECCC) have requested a probe into allegations raised by civil society groups and victims, related to a security centre where numerous Cambodians were unlawfully detained, subjected to inhumane conditions and forced labour, tortured and executed between 1975 and 1979 which may constitute crimes against humanity. The co-prosecutors have also requested that Nuon Chea, Ieng Sary, Khieu Samphan, Ieng Thirith and Kaing Guek Eav – who are all currently in the custody of the ECCC – be investigated for their involvement in these crimes.

(Laurence De Graeve)

Hariri

The international tribunal being set up to try those responsible for political killings in Lebanon has moved into its start-up phase. All actions relating to the tribunal's preparatory phase have been undertaken, including the signing of an agreement with the Netherlands to host the proceedings and the identification of premises there. The selection of the judges, the prosecutor and the registrar has also been completed and a draft budget will be submitted soon to the tribunal's management committee. The tribunal will follow on the work of the International Independent Investigation Commission (IIIC), which is charged with probing the murder of Mr. Hariri, killed in 2005. Once it is formally established, it will be up to the tribunal to determine whether other political killings in Lebanon since October 2004 were connected to Mr. Hariri's assassination and could therefore be dealt with by the tribunal.

See <http://www.un.org/Docs/journal/asp/ws.asp?m=s/2008/173>

(Laurence De Graeve)

The Court of Bosnia and Herzegovina, War Crimes Chamber

In its third year, the War Crimes Chamber of the Court of BiH sentenced ten persons to a total of 142 years and six months imprisonment for their participation in war crimes, while the Prosecution of BiH opened 312 investigations against 894 persons. In 2007, the Court of BiH confirmed 17 indictments against persons who allegedly committed war crimes in Bugojno (Kukavica, Gasal, Handzic and Dautovic), in Jajce (Mirko Pekez, Mirko Pekez and Milorad Savic), Kalinovik (Ratko Bundalo, Djordjislav Askraba and Nedjo Zeljaja), Borkovac settlement in Bratunac (Mirko Todorovic and Milos Radic), Foca (Rajko and Ranko Vukovic), Vogosca (Mladen Milanovic), Sanski most (Suad Kapic) and Kljuc (Idhan Sipic) between 1992 and 1995.

See [BIRN Justice Reports](#) on

http://www.publicinternationallaw.org/warcrimeswatch/archives/wcpw_vol03issue10.html#cam1

(Laurence De Graeve)

ECTHR Rules on Case of Deportation in Face of Abuse

On 28 February 2008 the Grand Chamber of the European Court of Human Rights issued its judgment in the case of Saadi v. Italy (Application No. 37201/06). The Court affirmed the prohibition to deport a person who risks torture, inhuman or degrading treatment and clarified the scope of this prohibition (see especially §§ 124-149). It *inter alia* stated that:

138. ..., the Court cannot accept the argument ... that a distinction must be drawn under Article 3 between treatment inflicted directly by a signatory State and treatment that might be inflicted by the authorities of another State, and that protection against this latter form of ill-treatment should be weighed against the interests of the community as a whole (...).

139. The Court considers that the argument based on the balancing of the risk of harm if the person is sent back against the dangerousness he or she represents to the community if not sent back is misconceived. The concepts of "risk" and "dangerousness" in this context do not lend themselves to a balancing test because they are notions that can only be assessed independently of each other. Either the evidence adduced before the Court reveals that there is a substantial risk if the person is sent back or it does not. The prospect that he may pose a serious threat to the community if not returned does not reduce in any way the degree of risk of ill treatment that the person may be subject to on return. ...

140. With regard to the [argument] to the effect that where an applicant presents a threat to national security, stronger evidence must be adduced to prove that there is a risk of ill-treatment (...), the Court observes that such an approach is not compatible with the absolute nature of the protection afforded by Article 3 either. ... it reaffirms that for a planned forcible expulsion to be in breach of the Convention it is necessary - and sufficient - for substantial grounds to have been shown for believing that there is a real risk that the person concerned will be subjected in the receiving country to treatment prohibited by Article 3 (...). ...

142. Furthermore, the Court has frequently indicated that it applies rigorous criteria and exercises close scrutiny when assessing the existence of a real risk of ill-treatment (...) in the event of a person being removed from the territory of the respondent State As a result, since adopting the *Chahal* judgment it has only rarely reached such a conclusion. ...

148. Furthermore, it should be pointed out that even if, as they did not do in the present case, the Tunisian authorities had given the diplomatic assurances requested by Italy, that would not have absolved the Court from the obligation to examine whether such assurances provided, in their practical application, a sufficient guarantee that the applicant would be protected against the risk of treatment prohibited by the Convention (...). The weight to be given to assurances from the receiving State depends, in each case, on the circumstances obtaining at the material time.

(Frederik Naert, KU Leuven)

National Developments

Canadian Court Ruling on Afghanistan Detention

On 12 March 2008, the Federal Court of Canada held that while detainees in the custody of Canadian forces in Afghanistan have rights accorded to them under international law and the Afghani Constitution, they do not have rights under the Canadian Charter of Rights and Freedoms and that the latter does not apply in this case. It therefore dismissed the cause of action brought by human rights organisations against senior Canadian officials to challenge the transfers of persons detained by the Canadian Forces in Afghanistan. See *In the Matter of Amnesty International Canada v. Chief of the Defense Staff for the Canadian Forces* (2008 FC 336, <http://cas-ncr-nter03.cas-satj.gc.ca/rss/T-324-07%20Decision.pdf>) and ILIB of 31 March 2008.

(Frederik Naert, KU Leuven)

Germany - Authority to counter renegade aircraft – Replying to a written question of a parliamentary group of the German Bundestag (Bündnis 90/Die Grünen) (16/7464), the Federal Government stated in January 2008 (16/7738) that it had to be determined on a case-by-case basis whether its armed forces were authorised to shoot down a hijacked aircraft. In any case they would be entitled to counter renegade aircrafts if these amount to an attack emanating from a State or a de-facto regime. The same would be true if the attack emanated from an international terrorist group as long as it would give rise to the right of self-defence according to article 51 of the UN Charter. The government also informed that deliberations to change the Constitution in order to enlarge the armed forces' authorisation to use armed force against renegade aircrafts were ongoing.

(http://www.bundestag.de/aktuell/hib/2008/2008_027/09)

(Dr. Birgit Kessler)

Italian Judge Allows CIA Rendition Trial to Continue

On 19 March 2008, an Italian judge ordered the resumption of a trial *in absentia* against US and Italian secret agents accused of abducting a terrorism suspect from Italy. See Reuters, 'Italy Judge Clears Way For CIA "Rendition" Trial', 19 March 2008, <http://www.reuters.com/article/topNews/idUSL191346120080319?feedType=RSS&feedName=topNews>.

(Frederik Naert, KU Leuven)

Netherlands Appeals Court Acquits Kouwenhoven

On 10 March 2008, the Court of Appeal in The Hague acquitted Dutch businessman Kouwenhoven of all charges against him for lack of evidence. The charges were illegal transports of weapons in violation of UN sanctions (for which Kouwenhoven had been condemned in first instance) and participation in war crimes committed in Liberia and Guinea. An English summary of the judgment is available online at <http://www.rechtspraak.nl/Actualiteiten/Press+release+Kouwenhoven.htm#top>. The full Dutch text may be accessed at <http://www.rechtspraak.nl> under LJN number BC6068.

(Frederik Naert, KU Leuven)

Philippine Court Ruling on Kidnapping by Military

On 26 December 2007, a Philippine Court of Appeals ordered the country's Defense Secretary and Army Chief of Staff to provide the court with a wide range of documents and information regarding two brothers who claim to have been abducted and tortured by Philippine armed forces and/or other security forces. The court found that two farmers, brothers Raymond and Reynaldo Manalo, were abducted in February 2006 and detained for 16 months by members of the Philippine Army and security forces. The ruling also implicates retired Maj. Gen. Jovito Palparan. See J. Hall, 'Judging Manila', *The Wall Street Journal Asia*, 22 January 2008, <http://online.wsj.com/article/SB120096313853705109.html>.

(Frederik Naert, KU Leuven)

Spanish Judge Issues Arrest Warrants for 40 Rwandans for 1994 Killings

Spanish judge Fernando Andreu has issued international arrest warrants for 40 Rwandan soldiers accused of carrying out mass killings of Hutus in Rwanda and in refugee camps in then Zaire after Kagame took power in Rwanda following the 1994 genocide. He also indicted them for the murder of nine Spanish citizens. Moreover, he claims to have evidence implicating Rwanda's current President Kagame. The indicted soldiers are also accused of crimes against humanity, genocide and terrorism. See BBC, 'Spain Judge Indicts Rwanda Forces', 6 February 2008, <http://news.bbc.co.uk/2/hi/europe/7230794.stm>.

(Frederik Naert, KU Leuven)

UK Apologizes for Iraq Torture Case

Late March 2008, the UK Secretary of Defence and the Armed Forces Minister admitted that British forces tortured 9 detainees near Basra, Iraq, in 2003 (one of whom died) and apologized for this abuse. The UK is negotiating compensation with the victims. See e.g. <http://www.belfasttelegraph.co.uk/news/local-national/article3558901.ece?service=print> and http://news.bbc.co.uk/2/hi/uk_news/7316943.stm.

(Frederik Naert, KU Leuven)

Developments in the US

This section cannot reflect all relevant developments, but merely briefly mentions some of them.

On 21 December 2007, US President Bush signed the Genocide Accountability Act (Public Law 110-151) into law. This Act amends Title 18 section 1091 of the US Code (see http://caselaw.lp.findlaw.com/scripts/ts_search.pl?title=18&sec=1091). See *ILIB* of 28 December 2007.

After a two-year investigation into the killings of up to 24 civilians in Haditha (Iraq) on 19 November 2005, the US Marine Corps has decided that none of the Marines involved in the incident will be charged with murder. Instead, two enlisted Marines and two Marine officers will face trial in coming months for the killings and for failing to investigate them. One of the enlisted marines is charged with nine counts of voluntary manslaughter and the battalion commander faces charges that he was derelict in his duty for failing to ask for an investigation. See J. White, 'No Murder Charges Filed in Haditha Case. Four Marines to Face Lesser Charges After Two-Year Inquiry Into Iraqi Killings', *The Washington Post*, 4 January 2008.

Early January 2008, the convening authority, Maj. Gen. Richard J. Rowe, overturned the conviction of Lt. Col. Steven L. Jordan, the only commissioned officer charged in connection to the Abu Ghraib prison abuse scandal. Jordan now only has an administrative reprimand.

He later stated that he felt the investigation into the scandal did not adequately scrutinize those involved. See <http://jurist.law.pitt.edu/paperchase/2008/01/conviction-of-abu-ghraib-officer-thrown.php> and http://jurist.law.pitt.edu/paperchase/2008_01_11_indexarch.php#8041121478789212119.

The debate over interrogation techniques continued, with a focus on "waterboarding" (which has been qualified as torture by the UN High Commissioner for Human Rights, see <http://jurist.law.pitt.edu/paperchase/2008/02/un-rights-chief-says-waterboarding.php>) and President Bush vetoed a bill prohibiting the CIA to use this technique. See e.g. <http://jurist.law.pitt.edu/paperchase/2008/03/us-house-fails-to-override-bush-veto-of.php> and <http://jurist.law.pitt.edu/forumy/2008/02/just-following-orders-doj-opinions-and.php>.

On 11 February 2008, the US charged 6 Guantánamo detainees with murder and war crimes in connection with the 11 September 2001 attacks and said it would seek the death penalty if they were convicted. The men are set to be the first detainees brought before a military tribunal over these attacks. See <http://www.guardian.co.uk/world/2008/feb/11/guantanamo.usa> and http://jurist.law.pitt.edu/paperchase/2008_02_11_indexarch.php#237388616331630077.

In a case brought against General Moshe Ya'alon, former Head of Army Intelligence for the Israel Defense Forces, for his alleged involvement in the shelling of a UN compound in Qana (Lebanon) in 1996 leading to the death or injury of the plaintiffs' relatives and families, the Court of Appeals of the DC Circuit affirmed the District Court's dismissal of the plaintiffs' suit for lack of subject matter jurisdiction under the Foreign Sovereign Immunities Act (FSIA) and concurred with the District Court's denial of plaintiffs' motion for discovery on 15 February 2008. See <http://pacer.cadc.uscourts.gov/docs/common/opinions/200802/07-7009a.pdf> and ILIB of 22 February 2008.

On 22 February 2008, the Federal Court of Appeals for the Second Circuit affirmed the holding of the District Court dismissing the Plaintiffs' Alien Tort Statute suit on the grounds that they failed to demonstrate a violation of international law. It examined the 1925 Geneva Protocol for the Prohibition of the Use in Asphyxiating Poisonous or Other Gases and of Bacteriological Methods of Warfare and customary international law. The Court also affirmed that the claims were barred by the Government Contractor defense. The case is *Vietnam Association for Victims of Agent Orange v. Dow Chemical Co.* (<http://caselaw.lp.findlaw.com/data2/circs/2nd/051953p.pdf>). See ILIB of 10 March 2008.

(Frederik Naert, KU Leuven)

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M. DALY, *Darfur's sorrow. A history of destruction and genocide*, Cambridge University Press, 2007, 392 p., ISBN 978-0-521-87618-6 (HB) / 978-0-521-69962-4 (PB), 45 GBP (HB) / 14,99 GBP (PB), www.cambridge.org

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(Stanislas Horvat, Director of the Documentation Centre)

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