



NEWSLETTER April/May/June 2008

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EDITORIAL

Dear reader,

On 12 June 2008 the US Supreme Court issued its judgment in the cases of *Boumediene v. Bush* (No. 06-1195) and *Al Odah v. United States* (No. 06-1196). In a 5 to 4 decision, the court *inter alia* held that foreign nationals held at Guantanamo Bay have a right to pursue habeas challenges to their detention before regular US courts; that Congress had unconstitutionally taken away habeas rights and that the procedures provided for by the Detainee Treatment Act of 2005, including the Combatant Status Review Tribunals and the specific appeals process, are not an adequate substitute for habeas corpus review.

The same day, the court also ruled that the habeas statute extends to American citizens held overseas by American forces operating subject to an American chain of command, including the Multinational Force–Iraq, but that Federal district courts may not exercise their habeas jurisdiction to enjoin the US from transferring individuals alleged to have committed crimes and are detained within the territory of a foreign state to that state for criminal prosecution because these states have the right to prosecute such individuals for crimes committed on their soil, even if its criminal process does not come with all the rights guaranteed by the Constitution (*Munaf v. Geren* (No. 06-1666) and *Geren v. Omar* (No. 07-394)).

These important cases indicate once again that the military does not operate in isolation, but operates within the framework of the law, confirmed by the judiciary. Our Society counts many members from both the military and the judiciary, from around the globe. It is therefore an excellent cross road for exchanges of information and views and for conceptual work on how the military must operate within the lines of the law.

Ludwig Van Der Veken
Secretary-General

Obituary Notice

With great regret, the General Secretariat learned of **Mr. Albert Alexander's death**. He was a highly respected member of our Society. We will always stay grateful for his substantial contributions to the objectives of our association. Particularly, we emphasize his outstanding support of the Society as the Assistant Secretary-General from 1968 to 1985 and from 1989 to 1990 and as the Secretary-General from 1986 till 1988. On behalf of our association, the Secretary General expressed our condolences to his relatives and friends.

NEWS, ANNOUNCEMENTS OF CONFERENCES, SEMINARS, ETC.

The Hague Prize Foundation has extended the deadline to nominate candidates for the **Hague Prize for International Law**. For further information see: <http://www.thehagueprize.nl/>

The Belgian Group of the Society has held a one day **conference on the impact of military regulations on criminal law and criminal procedures** in Brussels (Belgium) on 12 June 2008. For more information, please contact the General Secretariat.

The Belgian Group of the Society will hold a one day **conference on prosecution of violations of international humanitarian law**. The conference will take place in the Royal Military Academy in Brussels (Belgium) in October 2008 (date to be determined). For more information, please contact the General Secretariat.

(Alfons Vanheusden, Assistant Secretary-General)

Call for Papers for the CIARDI PRIZE 2009

The Italian PROF. GIUSEPPE CIARDI FOUNDATION will award its scientific prize in 2009 in the overall amount of 1.500 Euro.

The prize is intended to reward any substantial and original study dealing with military law, the law of war or any matter connected with or related to the aforementioned.

Works submitted must have been published after the 1st January 2006 and must be written in English, French, German, Italian or Spanish.

The Jury will be presided by *Doctor Giovanna Ciardi*. Other four members will be designated on equal number both by the International Society for the Military Law and the Law of War and the Italian Group of the same Society.

Works submitted need to be sent in three copies, by postal mail, before 1st January 2009 as follows:

a) two copies to FONDAZIONE PROF. GIUSEPPE CIARDI, Presidente Dott.ssa Giovanna Ciardi, c/o Gruppo Italiano della Società di Diritto Militare e della Guerra, Viale delle Milizie 5/c 00192 ROMA ITALIA;

b) one copy to INTERNATIONAL SOCIETY FOR MILITARY LAW AND THE LAW OF WAR, Avenue de la Renaissance 30 - 1000 BRUSSELS/BRUXELLES, BELGIUM/BELGIQUE.

All submissions must indicate the author of the work (full name; postal and e-mail addresses; phone and fax numbers).

The International Society for the Military Law and the Law of War, in order to widen the choice of scientific works for the award, may submit a list of works, eventually based on both the book reviews of the *Revue de Droit Militaire et de la Guerre* and the articles published by the same *Revue*, after having sought the consent of the respective author. The above lists must be submitted by mail with one copy of each work before 1st January 2009, with all the necessary information on the author, to FONDAZIONE PROF. GIUSEPPE CIARDI, Presidente Dott.ssa Giovanna Ciardi, c/o Gruppo Italiano della Società di Diritto Militare e della Guerra, Viale delle Milizie 5/c 00192 ROMA ITALIA. Appropriate consideration will be taken in order to comply with both the principle of impartiality and the separation of duties between designated members of the Jury and the members reviewing and/or acting as proponents of works for the award.

The Jury has the faculty to award a second price of the amount of 500 Euro. In this case the winner of the first price will be awarded with 1.000 Euro. Other not awarded works may obtain a special and reasoned mention for exceptional scientific worth.

The proclamation of the winners will be issued at the XVIII Congress of the International Society for Military Law and the Law of War.

(FONDAZIONE PROF. GIUSEPPE CIARDI)

Oslo seminar on international criminal justice and the military

The International Peace Research Institute, Oslo (PRIO) will be organizing a seminar on international criminal justice and the military, scheduled to take place on 12-13 September 2008. This seminar, an event in the series of the Forum for International Criminal Justice and Conflict (FICJC), is organised jointly by the ICC Legal Tools Programme, the Norwegian Centre for Human Rights; the Norwegian Red Cross; the Danish Red Cross; the Office of the Judge Advocate General for the Norwegian Armed Forces; the Norwegian Defence Command and Staff College; the Erik Castren Institute of International Law and Human Rights; the University of Helsinki; the International Institute of Humanitarian Law; the Christian Michelsen Institute and the International Peace Research Institute, Oslo (PRIO).

The seminar considers the role of international criminal justice in the military operations, the role of the military in international criminal justice, and what these roles mean for the soldierly profession in contemporary armed conflicts. It endeavours to bring international criminal lawyers, military lawyers and specialists in related disciplines, as well as officers and enlisted personnel in the armed forces concerned with the normative standards of military operations, closer together into dialogue and collaboration. Through presentations and discussions, participants explore various issues surrounding international criminal justice as an instrument of normative restraint on belligerent conduct.

Further information may also be found at the FICJC website:

<http://www.prio.no/FICJC/Forum-activities/International-Criminal-Justice-and-the-Military/>

To register, please send an e-mail message to:

ficjc@prio.no

https://webmail.uio.no/src/compose.php?send_to=ficjc%40prio.no

with 'Seminar 080912' in the subject field, indicating your wish to register as a seminar participant. Remember to mention your name, functional title (for example, 'student' or 'Legal Adviser (MFA)') and e-mail address.

*(Nobuo Hayashi
Researcher, International Peace Research Institute, Oslo (PRIO)/
Visiting Professor, International University of Japan)*

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

Dublin conference on cluster munitions

From the 19 to the 30th of May 2008, more than a hundred states participated in Dublin (Ireland) in the next and most important step of the so-called Oslo Process, that was launched more than a year ago, to conclude by the end of 2008 a new international treaty banning all cluster munitions that cause unacceptable harm to civilians. The final text of the new Convention on Cluster Munitions was adopted at the final plenary meeting. A signature ceremony, open for all States wanting to become States Parties to the new Convention, will take place in Oslo (Norway) on the 3rd of December 2008. The convention will enter into force as soon as 30 states have ratified it.

The new Convention prohibits almost all existing cluster munitions, with the sole exception for munitions that contain fewer than 10 explosive sub munitions, each one designed to detect and engage a single target object and equipped with an electronic self-destruction and self-deactivating mechanism. Just a few states have these kinds of munitions in stock.

One of the key issues in this Convention is that states will have the obligation to encourage States not parties to ratify, accept, approve or accede to the Convention, and to promote the norms it establishes and to make its best efforts to discourage States not parties to the convention from using cluster munitions. However, it was accepted that states parties, their military personnel or nationals, may engage in military cooperation and operations with states not parties to the convention that might engage in activities prohibited to a State party.

Other key provisions of the Convention contain clauses on victim assistance, international cooperation and assistance, storage and stockpile destruction risk education, and clearance and destruction of cluster munitions remnants.

Unfortunately, some of the world's main producers and stockpiles, as the US, Russia and China, continue to oppose this convention.

For more information see:

- www.clusterprocess.org
- <http://www.clustermunitionsdublin.ie/>
- <http://www.stopclustermunitions.org/news/?id=296>
- <http://news.bbc.co.uk/2/hi/europe/7423714.stm>
- <http://mondediplo.com/2008/06/10clusterbombs>

(Isabelle Heyndrickx)

First Annual Review Conference of the International Compact with Iraq

On 29 May 2008, Foreign Ministers, Heads of Organizations and other high-level officials representing some 100 States and Organizations gathered in Stockholm (Sweden) to review the progress of the International Compact with Iraq, the five-year plan to promote peace and development in the strife-torn country.

During the Conference, which is led by the government of Iraq and co-chaired by the UN, the participants determined that the Government in cooperation with others has undertaken important efforts to improve security and public order and to combat terrorism and sectarian violence across Iraq.

The UN Secretary General, Mr. Ban Ki-moon emphasized the strong progress in the Iraqi military, political, economical and social areas, whereupon he pointed out that the situation in the country remains fragile. Furthermore he stressed that it is essential to build up professional security forces. Beyond, he stated that there was a recognition for a certain need to expand the diplomatic and trade relations with Iraq. Therefore Mr. Ban Ki-moon added that he also accepted the Iraqi Government's six-point proposal for a "Partnership for Development".

At the end of the conference, the delegates adopted the Stockholm Declaration, which contains the commitment of the participants to support Iraq's efforts to build a united, federal and democratic country, based on the rule of law and respect to human rights, at peace with its neighbours and itself, and on an accelerated path to sustainable economic self-sufficiency and prosperity. Furthermore the delegates promoted bilateral investment and trade relationships with Iraq whereas Iraq invited international partners to invest in the future of Iraq and presented its initiatives for integration with the regional and global economy.

Further information see:

- www.iraqcompact.org
- <http://www.sweden.gov.se/sb/d/10569>
- <http://www.un.org/apps/news/story.asp?NewsID=26836&Cr=iraq&Cr1>
- <http://www.un.org/news>

(Janina Bollmann)

International Organisations

Developments at the UN Security Council¹

The Security Council extended the mandate of the UN Observer Mission in Georgia (UNOMIG) until 15 October 2008 (Res. 1808 of 15 April 2008); of the UN Mission in Sudan (UNMIS - set up to support a 2005 peace agreement that ended the civil war between north and south Sudan and not to be confused with UNAMID) until 30 April 2009 (Res. 1812 of 30 April 2008); of the UN Mission for the Referendum in Western Sahara (MINURSO) until 30 April 2009 (Res. 1813 of 30 April 2008) and of the UN Peacekeeping Force in Cyprus (UNFICYP) until 15 December 2008 (Res. 1818 of 13 June 2008). Furthermore, on 25 April 2008 in Resolution 1810, the Security Council issued a three-year extension to the mandate of the Security Council Committee which works to halt the proliferation of nuclear, chemical and biological weapons and which was first established under Resolution 1540 (2004). Also, on 2 June 2008, it extended the mandate of the International Independent Investigation Commission for Lebanon until 31 December 2008 (Res. 1815).

The Security Council adopted Resolution 1814 of 15 May 2008 on Somalia and on 2 June 2008, it adopted Resolution 1816 on measures to combat piracy and armed robbery against vessels in the territorial waters of Somalia and the high seas off the coast of Somalia. Paragraph 7 of the latter Resolution reads as follows:

Decides that for a period of six months from the date of this resolution, States cooperating with the TFG in the fight against piracy and armed robbery at sea off the coast of Somalia, for which advance notification has been provided by the TFG [Transitional Federal Government] to the Secretary-General, may:

(a) Enter the territorial waters of Somalia for the purpose of repressing acts of piracy and armed robbery at sea, in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law; and

(b) Use, within the territorial waters of Somalia, in a manner consistent with action permitted on the high seas with respect to piracy under relevant international law, all necessary means to repress acts of piracy and armed robbery;

Furthermore, on 16 April 2008, the Security Council adopted Resolution 1809 on peace and security in Africa, in which it stresses the role of and cooperation with regional organizations and *inter alia* expresses "its determination to take effective steps to further enhance the relationship between the United Nations and regional organizations, in particular the African Union, in accordance with Chapter VIII of the United Nations Charter". On 11 June 2008, it adopted Resolution 1817 on measures against drugs cultivation, production and trafficking in Afghanistan. It also adopted presidential statements on security sector reform (S/PRST/2008/14 of 14 May 2008), post-conflict peacebuilding (S/PRST/2008/16 of 20 May 2008) and the protection of civilians in armed conflict (S/PRST/2008/18 of 27 May 2008). On 30 April 2008, it held a debate on the threat to international peace and security posed by the uncontrolled trade in small arms and their excessive accumulation and proliferation (see <http://www.un.org/Depts/dhl/resguide/scact2008.htm>).

(Frederik Naert, KU Leuven)

UN Officials Deplore Death Sentences for Civilians by Military Court in DRC

The UN High Commissioner for Human Rights and the UN Special Envoy to the Democratic Republic of the Congo (DRC) condemned the sentencing to death of three civilians by a Congolese military tribunal in connection with the murder of journalist Serge Maheshe in June 2007, denouncing irregularities in the trial. They welcomed the acquittal of two other accused civilians in the case. "I condemn the practice of military tribunals which continue to judge civilians in violation of international norms and the Congolese Constitution", the UNHCHR said. See UN press release, 22 May 2008 and <http://www.monuc.org/News.aspx?newsID=17392>.

(Frederik Naert, KU Leuven)

¹ For the resolutions and other documents, see <http://www.un.org/documents>.

International(ised) Courts

DEVELOPMENTS AT THE ICC²

After being elected in February by the ICC judges elected, by an absolute majority, Ms. Silvana Arbia of Italy was sworn in as the next Registrar of the International Criminal Court for a five-year term on 17 April 2008. Ms. Arbia succeeds Bruno Cathala of France. Ms Arbia has worked as the Chief of Prosecutions at the International Criminal Tribunal for Rwanda (ICTR), where she was previously a Senior Trial Attorney and Acting Chief of Prosecutions in the Office of the Prosecutor. Furthermore, Ms Arbia participated in the drafting of the Rome Statute of the International Criminal Court as a member of Italian delegation at the 1998 Diplomatic Conference in Rome. See <http://www.icc-cpi.int/press/pressreleases/358.html>

On 28 April 2008, the ICC's pre-trial chamber published an arrest warrant for Bosco Ntaganda, former Deputy Chief of the General Staff of the Forces Patriotiques pour la Libération du Congo (FPLC), and current alleged Chief of Staff of the National Congress for the Defence of the People (CNDP) armed group under the command of Laurent Nkunda, active in North Kivu in the DRC. Mr. Ntaganda is accused of playing a central role in enlisting and conscripting children aged below 15 into the Patriotic Forces for the Liberation of the Congo (FPLC), another militia group, and of using those children in active hostilities in 2002-03. The warrant was first issued in August 2006, but remained secret until prosecutors asked the pre-trial chamber to unseal it. Mr. NTAGANDA is the second person charged in connection with crimes allegedly committed by leaders of the FPLC armed group in the District of Ituri. The first suspect, Mr. Thomas Lubanga Dyilo, President of the UPC ("Union des Patriotes Congolais") and former Commander-in-chief of its military wing, the FPLC, was surrendered to the Court on 17 March 2006. He will be the first person to stand trial at the ICC. See <http://www.icc-cpi.int/press/pressreleases/362.html>

The trial of Thomas Lubanga Dyilo was formerly scheduled to start on 23 June 2008 but on 13 June 2008, the Trial Chamber I imposed a stay on the proceedings of the case because of the misuse by the prosecution of Article 54 (3) (e) of the Rome Statute which allows the Prosecutor, exceptionally, to receive information or documents, on the condition of confidentiality, which are not for use at trial but solely for the purpose of generating new evidence. The Chamber concluded, in its "Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008" that this misuse has had the consequence that a significant body of exculpatory evidence has not been disclosed to the accused, thereby improperly inhibiting the opportunities for the accused to prepare his defence. Unless this stay is lifted the trial process in all respects will remain at a halt. See <http://www.icc-cpi.int/press/pressreleases/381.html>

On 24 May 2008, Jean-Pierre Bemba, former Vice-President of the Democratic Republic of the Congo (DRC), has been arrested by Belgian authorities on a sealed arrest warrant issued by the ICC on 23 May. Mr. Bemba is the first person arrested in the context of the ICC investigation in the Central African Republic (CAR). Jean-Pierre Bemba, President and Commander in Chief of the Mouvement de libération du Congo (MLC), is alleged to be criminally responsible for four counts of war crimes and two counts of crimes against humanity committed on the territory of CAR from 25 October 2002 to 15 March 2003. The Court's pre-trial chamber has found that there are reasonable grounds to believe that the MLC forces led by Jean-Pierre Bemba carried out a widespread or systematic attack against a civilian population during which rape, torture, outrages upon personal dignity and pillaging were committed and that Jean-Pierre Bemba, as President and Commander in Chief of the MLC, was vested with de facto and de jure authority by the members of the MLC to take all political and military decisions. On 10 June 2008, the judges of Pre-Trial Chamber issued a request to the Kingdom of Belgium for the arrest and surrender of Jean-Pierre Bemba to the Court. See <http://www.icc-cpi.int/press/pressreleases/370.html>

² See generally <http://www.icc-cpi.int>.

On 5 June 2008, ICC's Prosecutor Luis Moreno-Ocampo informed the United Nations Security Council (UNSC) that he will present in July a second Darfur case before the ICC judges. The Prosecutor asked the UNSC to issue a statement requesting full cooperation of the Sudanese with the Court. He mentioned that one year after the first arrest warrants were issued by the ICC, the Government of Sudan has not complied with Resolution 1593, has not arrested Ahman Harun, former Minister of State for the Interior of Sudan -- and current Minister of State for Humanitarian Affairs, and Janjaweed militia leader Ali Muhammad Al Abd-Al-Rahman, also known as Ali Kushayb. According to ICC, evidence collected over two years from different sources shows that Mr. Harun financed, armed and incited the Janjaweed to attack Darfurian villages from 2003-2004 and killing civilians, with Mr. Kushayb having led the attacks. Their actions have allegedly forced millions to flee their homes. They remain free and involved in criminal acts against civilians in Darfur. See <http://www.icc-cpi.int/press/pressreleases/375.html>

On 6 June 2008, at the 9th meeting of its sixth session, the Assembly of States Parties to the Rome Statute adopted two resolutions: on the Review Conference of the Rome Statute and on the transfer of funds between major programmes of the Court. As regards the discussions on the crime of aggression, the Assembly focused on the procedure for entry into force of amendments on aggression; the suggested deletion of article 5, paragraph 2, of the Statute; the application of article 28 of the Statute to the crime of aggression; the suggested inclusion of the text of United Nations General Assembly resolution 3314 (XXIX) as an annex to the Rome Statute; and the elements of crime. The Assembly will hold its seventh session from 14 to 22 November 2008 in The Hague. See <http://www.icc-cpi.int/press/pressreleases/376.html> and as regard the crime of aggression <http://www.iccnw.org/?mod=aggression>

(Laurence De Graeve)

Developments at the ICTY and ICTR³

On 3 April 2008, a Trial Chamber of the ICTY acquitted Ramush Haradinaj and Idriz Balaj of all charges which alleged they were responsible for war crimes and crimes against humanity committed in Kosovo between March and September 1998. It found the third accused, Lahi Brahimaj, guilty on two counts of cruel treatment and torture, and sentenced him to six years' imprisonment. Haradinaj, Balaj and Brahimaj faced charges of participation in a joint criminal enterprise whose aim was to consolidate the KLA's total control over Dukagjin area in north-western Kosovo by the unlawful removal, mistreatment and murder of Serbian and Kosovar Roma civilians, as well as Kosovar Albanian citizens who were perceived to have been collaborating with Serbian forces. The Trial Chamber found that, based on evidence presented, it was not satisfied beyond reasonable doubt that there was a joint criminal enterprise with the objective of targeting the civilians, therefore the three accused could not have participated in it. See <http://www.un.org/icty/pressreal/2008/pr1232e.htm>

On 7 April 2008, Slovakia and the ICTY signed an agreement on the enforcement of prison sentence imposed by the ICTY in Slovakian prisons. More than 37 people convicted by the tribunal have either served, or are currently serving, their sentence in one of the 15 countries which have signed an agreement. Five others are awaiting transfer to one of the States. See <http://www.un.org/icty/pressreal/2008/pr1234e.htm>.

On 16 May 2008, the ICTY Appeals Chamber decided, on a Motion filed by the Defence, to adjourn for a minimum of three months the trial of Jovica Stanišić after ruling that he is not fit to stand trial and ordered a reassessment of the accused's state of health before determining when the trial should resume. The decision overturned that of the trial chamber of 8 April 2008. The appeals chamber found that Mr. Stanišić has the right to be present in the court, deeming a video-conference link from the detention unit, as presented in the trial chamber decision, to be insufficient. Mr. Stanišić, former high-level official with the Serbian secret service, is accused of directing, organizing, equipping, training, arming and financing secret units of the Serbian State Security which murdered, persecuted and deported Croats, Bosnian Muslims and other non-Serb civilians from Bosnia and Herzegovina and Croatia between 1991 and 1995. See <http://www.un.org/icty/pressreal/2008/pr1251e.htm>

³ See generally respectively <http://www.un.org/icty> and <http://69.94.11.53>.

On 22 April 2008, delivering its Judgement in the case of Enver Hadžihasanović and Amir Kubura, both former senior officials in the Army of Bosnia and Herzegovina (ABiH), the Appeals Chamber upheld in part the Trial Chamber's findings with respect to the appellant's criminal liability as superiors for crimes committed by their subordinates in central Bosnia in 1993. The Appeals Chamber reduced the sentence of Enver Hadžihasanović from 5 years to 3,5 years, and the sentence of Amir Kubura from 2,5 years to 2 years. See <http://www.un.org/icty/pressreal/2008/pr1240.htm>

On 24 April 2008, Mladen Naletilić, also known as Tuta, was transferred to Italy to serve the remainder of his sentence of 20 years' imprisonment. Mladen Naletilić, founder and commander of the Convicts' Battalion, a military unit within the Croatian Defence Council (HVO), was convicted in 2003 of persecutions, unlawful labour, torture, wilfully causing great suffering or serious injury to body or health, the unlawful transfer of civilians, wanton destruction and plunder committed against Bosnian Muslims in the Mostar area of Bosnia and Herzegovina from April 1993 to January 1994. See <http://www.un.org/icty/pressreal/2008/pr1243.htm>

Kosovo's ex-minister for culture, youth and sport, Astrit Haraqija, and a former newspaper editor, Bajrush Morina, are accused by prosecutors – in an indictment filed in January and made public on 25 April 2008, of attempting to persuade a protected witness with the codename PW not to testify against Ramush Haradinaj, the former prime minister of Kosovo. Mr. Haradinaj was acquitted by the ICTY earlier in April (see above). On 20 May, another indictment was unsealed against Baton Haxhiu, renowned journalist in Kosovo, charged with contempt for having revealed in his publication the identity of a protected witness in the Haradinaj's case. See <http://www.un.org/icty/pressreal/2008/pr1243.htm>

On 14 May 2008, Haradin Bala was transferred to France to serve the remainder of his sentence of thirteen years' imprisonment for crimes committed against Serb and Kosovo Albanian civilians in Kosovo Liberation Army-run prison camp between May and July 1998.

The ICTY and the UN Interregional Crime and Justice Research Institute (UNICRI) have begun a joint project to transfer the knowledge gained from the tribunal's work, through a compilation of its best practices, to future courts and institutions dealing with the issues. The manual is due for completion later this year and a digest of ICTY jurisprudence is also being considered for publication by UNICRI. See <http://www.un.org/icty/pressreal/2008/pr1242e.htm>

On 6 May 2008 the trial of Callixte Kalimanzira, former Acting Minister of Interior from April-May 1994, began before the ICTR. Callixte Kalimanzira is charged with genocide, complicity in genocide and with direct and public incitement to commit genocide. See <http://69.94.11.53/ENGLISH/PRESSREL/2008/560.htm>

On 20 May 2008, Michel Bagaragaza, former Director General of the office controlling the Rwandan Tea industry, who stands accused of involvement in the 1994 genocide has been transferred from The Hague back to Arusha, Tanzania. In 2005, the accused was transferred to the Detention Unit of ICTY following a request by the ICTR Prosecutor to grant the transfer for security reasons. This was followed by two attempts by the Prosecutor to transfer Bagaragaza's case to the Kingdom of Norway and to The Netherlands. In the case of Norway, the Trial Chamber found that Norwegian criminal law did not provide for the crime of genocide. In the case of the Netherlands, the ICTR Prosecutor requested in August the revocation of the referral after an arrest of The Hague District Court, in a similar case involving another Rwandan, stating that the Dutch Courts do not have any jurisdiction in trying such a case. See <http://69.94.11.53/ENGLISH/PRESSREL/2008/561.htm>

(Laurence De Graeve)

Appeals Chamber Acquits Naser Orić

On 3 July 2008 the ICTY Appeals Chamber acquitted Naser Orić, a former commander of Bosnian Muslim forces in Srebrenica, for crimes committed during the 1992-1995 conflict.

On 30 June 2006, the Trial Chamber had sentenced Orić to two years' imprisonment for failing to take necessary and reasonable measures to prevent the murder and cruel treatment of a number of Bosnian Serbs held at the Srebrenica in the period between 27 December 1992 and 20 March 1993.

The Appeals Chamber found that the Trial Chamber failed to make all of the findings necessary to convict a person for command responsibility under the Article 7(3) of the Tribunal's Statute.

The Appeals Chamber underscored that, like the Trial Chamber, it had no doubt that grave crimes were committed against Serbs detained in the two detention facilities in Srebrenica between September 1992 and March 1993.

"However, proof that crimes have occurred is not sufficient to sustain a conviction of an individual for these crimes. Criminal proceedings require evidence establishing beyond reasonable doubt that the accused is individually responsible for a crime before a conviction can be entered".

The full summary of the judgement is available online at:

<http://www.un.org/icty/pressreal/2008/pr1269e-summary.htm>

(Davide Giovannelli)

SPECIAL COURT FOR SIERRA LEONE (SCSL)⁴

Justice Renate Winter has been elected to a one-year term as the new President of the Special Court for Sierra Leone. Justice Winter – who joined the SCSL in 2002 – succeeds Justice George Gelaga-King of Sierra Leone, who has served as President since 2006. She has also previously served as an international judge of the Supreme Court of Kosovo, as part of the UN interim civilian administration there.

(Laurence De Graeve)

HARIRI TRIBUNAL

On 2 June 2008, the UN Security Council extended through the rest of this year the mandate of the International Independent Investigation Commission (IIIC) probing into the February 2005 assassination of the former Lebanese prime minister Rafiq Hariri and a series of other recent killings in Lebanon. Those accused of Mr. Hariri's murder will be tried by the United Nations-backed Special Tribunal for Lebanon which is currently in its start-up phase. See S/RES/1815 (2008)

(Laurence De Graeve)

New Chechnya Rulings of the ECtHR

On 29 May 2008, the European Court of Human Rights issued five decisions finding Russia responsible for the disappearance of a dozen people during Russian armed raids in Chechnya in 2002 and 2003. The court held that the victims must be presumed dead following their unacknowledged detention by State servicemen and attributed the deaths to Russia, finding violations of articles 2 (right to life), 3 (prohibition of torture, inhuman and degrading treatment), 5 (freedom from arbitrary deprivation of liberty) and 13 (right to an effective remedy) of the European Convention on Human Rights. It directed Russia to pay a substantial amount of damages to the families of the disappeared. The cases are [Gekhayeva and others v. Russia](#); [Betayev and Betayeva v. Russia](#); [Sangariyeva and others v. Russia](#); [Ibragimov and others v. Russia](#) and [Utsayeva and others v. Russia](#) and are available online at <http://www.echr.coe.int>. See also http://jurist.law.pitt.edu/paperchase/2008_05_29_indexarch.php.

(Frederik Naert, KU Leuven)

National Developments

Australian Investigation Clears Forces of Wrongdoing in Afghanistan

On 12 May 2008, it was reported that an internal military probe cleared members of the Australian Defence Force of allegations that they mistreated four Taliban members detained following the death of an Australian soldier in Afghanistan last November. The investigation also cleared soldiers of any wrongdoing in connection with civilian deaths during the

⁴ See generally <http://www.sc-sl.org>.

November battle, but said that such deaths were "highly regrettable". See http://jurist.law.pitt.edu/paperchase/2008_05_12_indexarch.php.

(Frederik Naert, KU Leuven)

Canadian Judgments on Military Justice and Guantanamo

First, on 24 April 2008, in the case of *Trepanier v. H.M. The Queen* (CMAC-498, 2008 CMAC 3, http://www.cmac-cacm.ca/decisions/CMAC-498_e.pdf), the Court Martial Appeal Court of Canada ruled that section 165.14 and subsection 165.19(1) of the *National Defence Act* and article 111.02(1) of the *Queen's Regulations and Orders for the Canadian Forces* violate section 7 and the right to a fair trial guaranteed by paragraph 11d) of the *Canadian Charter of Rights and Freedoms*. The court stated that "to give the prosecution, in the military justice system, the right to choose the trier of facts before whom the trial of a person charged with serious Criminal Code offences will be held [generally referred to as the right to choose the mode of trial], as do section 165.14 and subsection 165.19(1) of the NDA, is to deprive that person, in violation of the principles of fundamental justice, of the constitutional protection given to offenders in the criminal process to ensure the fairness of their trial" (§ 103).

Second, in the case of *Billard v. H.M. The Queen* (CMAC-503, 2008 CMAC 4, http://www.cmac-cacm.ca/decisions/CMAC-503_e.shtml) on 25 April 2008, the Court Martial Appeal Court of Canada ruled on the appeal by a soldier who had been sentenced to 21 days of detention for neglect to the prejudice of good order and discipline pursuant to section 129 of the *National Defence Act*. The soldier had failed to don his helmet and flak vest in May 2006 in Kandahar Province (Afghanistan) contrary to Standing Orders, whilst the forward operating base in which he was present was under direct attack. The Court dismissed the appeal and held that (§§ 7-8): "This case raises an important principle, namely, "the Soldier first principle". A member of the Canadian Forces, whatever his or her rank, trade or occupation, is at all times a fighting soldier. The Appellant's offence did not relate to the performance of his routine duties as an intelligence operator; the evidence is that he performs those duties very well ... Rather, his offence bore directly on his failure to perform as a member of a fighting unit which was then under attack. It put at risk the lives and safety of himself and his comrades. It is imperative in such circumstances that lawful orders be unquestioningly obeyed".

Third, on 23 May 2008, in the case of *Canada (Justice) v. Khadr* (2008 SCC 28, <http://scc.lexum.umontreal.ca/en/2008/2008scc28/2008scc28.html>), the Supreme Court of Canada ruled on whether Omar Khadr, a Canadian taken prisoner in Afghanistan when he was 15 years old and detained by the US since 2002 at Guantanamo Bay, where he is facing murder and other terrorism-related charges, was entitled to obtain access to documents held by Canada relating to his questioning by Canadian officials in 2003 at Guantanamo Bay. The summary of the judgment reads as follows:

"K is entitled to disclosure from the appellants of the records of the interviews, and of information given to U.S. authorities as a direct consequence of conducting the interviews. The principles of international law and comity of nations, which normally require that Canadian officials operating abroad comply with local law and which might otherwise preclude application of the Charter to Canadian officials acting abroad, do not extend to participation in processes that violate Canada's binding international human rights obligations. The process in place at Guantanamo Bay at the time Canadian officials interviewed K and passed on the fruits of the interviews to U.S. officials has been found by the U.S. Supreme Court, with the benefit of a full factual record, to violate U.S. domestic law and international human rights obligations to which Canada subscribes. The comity concerns that would normally justify deference to foreign law do not apply in this case. Consequently, the Charter applies.

With K's present and future liberty at stake, Canada is bound by the principles of fundamental justice and is under a duty of disclosure pursuant to s. 7 of the Charter. The content of this duty is defined by the nature of Canada's participation in the process that violated its international human rights obligations.

In the present circumstances, this duty requires Canada to disclose to K records of the interviews conducted by Canadian officials with him, and information given to U.S.

authorities as a direct consequence of conducting the interviews, subject to claims for privilege and public interest immunity. Since unredacted copies of all documents, records and other materials in the appellants' possession which might be relevant to the charges against K have already been produced to a designated judge of the Federal Court, the judge will now review the material, receive submissions from the parties and decide which documents fall within the scope of the disclosure obligation".

(Frederik Naert, KU Leuven)

Canadian Military Justice Bill

A bill on military justice was introduced in the Canadian Parliament. The summary reads as follows: "This enactment amends certain provisions of the National Defence Act that govern the military justice system. The amendments, among other things, reduce the number of types of courts martial from four to two and permit an accused person, in certain circumstances, to choose the type of court martial that will be convened. The enactment also provides that certain decisions of the panel of a General Court Martial must be unanimous and clarifies the provision that deals with the period of liability with respect to summary trials under the Code of Service Discipline. It also makes a consequential amendment to the Geneva Conventions Act." See Bill C-60, An Act to amend the National Defence Act (court martial) and to make a consequential amendment to another Act, available <http://www2.parl.gc.ca/HousePublications/Publication.aspx?Docid=3555549&file=4> online at

(Frederik Naert, KU Leuven)

Ethiopia's Supreme Court Sentences Former Ruler to Death

On 26 May 2008, Ethiopia's Supreme Court sentenced the country's former ruler, Mengistu Haile Mariam (who is currently living in Zimbabwe), to death *in absentia*. See <http://news.bbc.co.uk/2/hi/africa/7420212.stm> and <http://www.chinapost.com.tw/international/africa/2008/05/27/158233/Ex-Ethiopia-ruler.htm>.

(Frederik Naert, KU Leuven)

Germany's Surveillance Flights Over Turkey Unconstitutional

Germany's Federal Constitutional Court ruled in May 2008 [- 2 BvE 1/03 -, http://www.bundesverfassungsgericht.de/entscheidungen/es20080507_2bve000103.html] that German surveillance flights over Turkey conducted in 2003 during the lead-up to the Iraq War were unconstitutional. The court held that the flights equated to "armed deployment," and thus needed to first be approved by the German parliament. Former Chancellor Gerhard Schroeder's government had not applied for prior consent of the Bundestag, arguing that the flights were a routine NATO operation which did not require parliamentary approval.

In the area of foreign policy, the German Constitution has left the Government a broad latitude to carry out its tasks on its own responsibility. However, there are constitutional limits. Whenever a military operation amounts to "armed deployment", prior approval by the German parliament, the Bundestag, is necessary.

In its decision, the court interpreted the term "armed deployment". An operation not only amounts to "armed deployment" if an involvement of German soldiers into combat actions is certain, but also if it has to be expected. However, the mere possibility of such an involvement is not sufficient. There needs to be a certain probability which has to be assessed by taking into account the legal and factual circumstances of the operation. Such corroborative evidence could be the mission's legal justification, its political aim or the ROE.

In sum, the judgment strengthened the rights of the German parliament by enlarging the number of cases in which the government has to apply for the prior consent of the parliament to the deployment of German forces abroad.

So far, the Bundestag has granted approval for recent German military missions around the world, including Afghanistan, Bosnia, Kosovo, Lebanon, Darfur and the Horn of Africa.

(Birgit Kessler)

Germany's Parliament Extended the Mandate in Kosovo

On 5th June German MPs approved the extension of the Bundeswehr's mandate in Kosovo as part of the multinational NATO force KFOR. Only 53 MPs from the far left party, Die Linke, voted against after having lodged a complaint with the Constitutional Court against the commitment of German soldiers, claiming that the operation was no longer covered by UN SC Res. 1244 after Kosovo's independence.

(Birgit Kessler)

Indonesian Supreme Court Acquits Militia Leader

On 14 March 2008, Indonesia's Supreme Court overturned the conviction of former East Timorese militia leader Eurico Guterres. Guterres had earlier been convicted in 2002 to 10 years imprisonment for crimes committed in 1999 in East Timor, a verdict confirmed in 2006. All other defendants who faced trial have similarly been acquitted. See <http://www.abc.net.au/news/stories/2008/04/05/2208864.htm> and <http://www.theage.com.au/news/world/jakarta-judges-clear-exmilitia-leader-over-timor-carnage/2008/04/05/1207249545046.html>.

(Frederik Naert, KU Leuven)

Israeli Supreme Court Upholds Detention Law

On 11 June 2008, the Israeli Supreme Court upheld the lawfulness of the Incarceration of Unlawful Combatants Law (available online at <http://www.jewishvirtuallibrary.org/jsource/Politics/IncarcerationLaw.pdf>). This law allows the government to detain unlawful combatants suspected of belonging to terrorist groups. See http://jurist.law.pitt.edu/paperchase/2008_06_12_indexarch.php and <http://www.haaretz.com/hasen/spages/991956.html>.

(Frederik Naert, KU Leuven)

Italy's Supreme Court Rules against Prosecution of U.S. Soldier

On June 19, 2008, Italy's supreme criminal court (Corte di Cassazione) ruled that U.S. soldier Mario Lozano cannot be tried by any Italian courts for the 2005 murder of the of the Italian military intelligence agent Nicola Calipari; due to the lack of jurisdiction of Italy. Mario Lozano was accused in connection with the fatal shooting of Nicola Calipari, who was driving to Baghdad airport after the release of kidnapped Italian journalist Giuliana Sgrena. The decision of the court, for the first time in Italy, deal with a case of friendly fire and the consequent problems of coordination of the jurisdictions between the U.S. and Italy.

For a brief discussion, see <http://www.wtop.com/?nid=105&sid=1425186> and http://news.findlaw.com/ap_stories/i/1103/06-19-2008/20080619115002_14.html

(Davide Giovannelli)

Senegal to Try Habre

On 8 April 2008, Senegal amended its constitution to allow its courts to try former Chadian leader Hissene Habre, who lives in Senegal. See http://jurist.law.pitt.edu/paperchase/2008_04_09_indexarch.php#8070447170732161720. See also earlier issues of this Newsletter on antecedents of the case.

(Frederik Naert, KU Leuven)

Uganda Establishes Special War Crimes Court

Late May 2008, it was reported that Uganda has established a special court to hear cases of alleged war crimes and human rights abuses related to an ongoing rebellion in the country.

The ICC chief prosecutor of the International Criminal Court has said that arrest warrants for rebel leaders will remain in effect, despite requests from Uganda that they be withdrawn. See http://jurist.law.pitt.edu/paperchase/2008_05_27_indexarch.php.

(Frederik Naert, KU Leuven)

Developments in the UK

On 9 April 2008, the House of Lords dismissed a claim brought by the mothers of two British soldiers who lost their lives while serving in the British army in Iraq. The thrust of the claim was that Article 2 of the European Convention on Human Rights imposes a duty on state parties to protect life; that this duty extends to the lives of soldiers; that armed conflict exposes soldiers to the risk of death; that therefore a state should take timely steps to obtain reliable legal advice before committing its troops to armed conflict; that had the UK done this before invading Iraq in March 2003, it would arguably not have invaded and that had it not invaded, the two soldiers would not have been killed (§§ 2-3). The court unanimously dismissed the claim. Lord Hope wrote that "*Crucially, the issue as to the legality of the invasion in international law has nothing to do with the state's obligation under article 2(1) of the Convention to protect the servicemen and women within its jurisdiction*" (§ 22). It may also be noted that divergent views were expressed on whether the soldiers were within the jurisdiction of the UK (compare, on the one hand, § 60, with on the other hand, §§ 8(3) and 66). See *R (on the application of Gentle (FC) and another (FC)) (Appellants) v The Prime Minister and others (Respondents)*, [2008] UKHL 20, <http://www.bailii.org/uk/cases/UKHL/2008/20.html>

On 11 April 2008, the High Court of Justice reportedly ruled that British service members are entitled to legal protection of their human rights wherever they may be and that sending them on patrol or into combat with inadequate equipment could be a violation of their human rights. See http://jurist.law.pitt.edu/paperchase/2008_04_11_indexarch.php#7962820533027378263.

On 14 May 2008, the UK Ministry of Defence announced that it will conduct a public inquiry into the death of Baha Mousa, an Iraqi hotel receptionist who died in British military custody in 2003. See http://jurist.law.pitt.edu/paperchase/2008_05_14_indexarch.php and <http://www.mod.uk/DefenceInternet/DefenceNews/DefencePolicyAndBusiness/ModAnnouncesBahaMousaPublicInquiry.htm>.

(Frederik Naert, KU Leuven)

Developments in the US

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

On 24 March 2008, a Military Commission handed down a ruling on a defense motion requesting the Court to apply the protections of Geneva Convention IV (GC IV) in the case of *USA v. Salim Ahmed Hamdan*. The court essentially held that GC IV applied to the conflict in Afghanistan; that the accused is not a protected person under this convention (because of his nationality) and that the US was not an occupying power in Afghanistan. It also addressed the question of derogations under article 5 GC IV and took the view that if the accused would have been protected under GC IV, his status as an unlawful combatant would permit derogation from the rights to which he would normally be entitled as a civilian so that he would only be protected by common article 3 to the Geneva Conventions. See http://www.pegc.us/archive/Hamdan_v_Rumsfeld/MC_ruling_20080324.pdf.

On 28 March 2008, US military prosecutors dropped all charges against Lance Cpl. Stephen B. Tatum, a US Marine charged in connection with the killings of 24 Iraqi civilians in Haditha in November 2005. A US Marine Corps statement said the charges were dropped "in order to continue to pursue the truth seeking process into the Haditha incident". See http://jurist.law.pitt.edu/paperchase/2008_03_28_indexarch.php.

Early April 2008, it was reported that the US military charged an Iraqi contractor (who also has the Canadian nationality), interpreter Alaa Mohammad Ali, with assault for stabbing a fellow contractor with a knife on 23 February 2008 in Iraq. It is said to be the first time since 1968 that

a contractor has been charged under military law. The case may become a test of the military's recently expanded jurisdiction over civilians who accompany the armed forces into the field, including during a "contingency operation", and commentators have stated that the constitutionality of this jurisdiction may be raised. See e.g. http://jurist.law.pitt.edu/paperchase/2008_04_05_indexarch.php#4725517636070533583 and http://jurist.law.pitt.edu/paperchase/2008_04_15_indexarch.php#2908912744290440452.

On 25 April 2008, US Army Sgt. 1st Class Trey A. Corrales was acquitted by a military jury of charges connected to the 2007 killing of an unarmed Iraqi civilian near the city of Kirkuk and was cleared of all charges against him. See http://jurist.law.pitt.edu/paperchase/2008_04_26_indexarch.php#5910535971690430021.

On 30 April 2008, US military judge rejected arguments that Canadian Guantanamo detainee Omar Khadr was a child soldier when he was captured in Afghanistan and that the US military commission responsible for his trial lacks jurisdiction over the case. See http://jurist.law.pitt.edu/paperchase/2008_04_30_indexarch.php#1923296548980930415.

Early May 2008, it was reported that the US military has reduced the sentence of Marine Corps Sgt. Lawrence G. Hutchins III from 15 in prison to 11 years in detention. In August 2007, a military court-martial jury convicted Hutchins of murder, conspiracy to commit murder, making a false official statement, and larceny for his role in the April 2006 kidnapping and murder of Iraqi civilian Hashim Ibrahim Awad in Hamdania. See http://jurist.law.pitt.edu/paperchase/2008_05_08_indexarch.php.

Mid May 2008, it was reported that US Marine Sgt. Jermaine Nelson will face a court martial later this year for murder in relation to an incident during the Multinational National Force-Iraq's November 2004 offensive in Fallujah in which unarmed Iraqi prisoners were allegedly killed. Nelson was given limited immunity in return for testifying against his squad leader, Jose Nazario. See http://jurist.law.pitt.edu/paperchase/2008_05_16_indexarch.php

On 21 May 2008, the 9th Circuit US Court of Appeals ruled that the US military could not automatically discharge people because they are gay; rather, the military must prove that a dismissal furthers the military's goals of troop readiness and unit cohesion. See e.g. <http://newyorklawschool.typepad.com/leonardlink/2008/05/9th-circuit-rul.html>; http://news.findlaw.com/ap/other/1110//05-22-2008/20080522020516_24.html and http://seattletimes.nwsourc.com/html/localnews/2004430947_gayruling22m.html.

On 23 May 2008, a Marine Corps General declined to press charges against two US Marines involved in a March 2007 incident in which 30 US Marines allegedly opened fire on civilians alongside a road in Nangahar province, Afghanistan, after a suicide bomber drove a vehicle carrying explosives into their convoy. A Marines spokesperson said that the two Marines and a third man will still face administrative action. A preliminary US military investigation found that the Marines began firing at bystanders, killing 19 civilians and injuring another 50. Last year, the Afghanistan Independent Human Rights Commission claimed that the soldiers violated international humanitarian law. See http://jurist.law.pitt.edu/paperchase/2008_05_23_indexarch.php

On 29 May 2008, the US Department of Defense (DOD) dismissed Col. Peter Brownback, the military judge presiding over the military commission trial of Canadian Guantanamo detainee Omar Khadr. The chief Guantanamo judge said Brownback was removed because the Army did not renew his recall orders and that the dismissal was not politically motivated. See http://jurist.law.pitt.edu/paperchase/2008_05_30_indexarch.php and http://jurist.law.pitt.edu/paperchase/2008_06_03_indexarch.php.

On 4 June 2008, a court-martial panel acquitted 1st Lt. Andrew Grayson, a US Marine intelligence officer charged in connection with the November 2005 killings of 24 Iraqi civilians in Haditha. See http://jurist.law.pitt.edu/paperchase/2008_06_05_indexarch.php and <http://192.156.19.109/lapa/iraq/Haditha/Haditha-Rel-003-080604.htm>.

On 5 June 2008, five men charged with plotting the 11 September 2001, including Khalid Sheikh Mohammed, were arraigned before a military court at Guantanamo Bay. The Pentagon approved death penalty charges against the five defendants in May 2008. See http://jurist.law.pitt.edu/paperchase/2008_06_05_indexarch.php.

(Frederik Naert, KU Leuven)

The U.S. Supreme Court decision *Boumediene v. Bush* struck down the parts of the Detainee Treatment Act (DTA) of 2005 and the Military Commissions Act of 2006 (MCA) that exempt U.S. courts of jurisdiction over the habeas corpus petitions filed by foreign nationals detained at the Guantanamo Bay facility in Cuba. The judgment is available online at <http://www.supremecourtus.gov/opinions/07pdf/06-1195.pdf>. According to the MCA, any "enemy combatant" held in U.S. custody does not have habeas jurisdiction, but as a substitute for habeas review, the MCA created a much more limited review proceeding (called DTA review) in the Court of Appeals for the District of Columbia for individuals to challenge only the military's classification of them as "enemy combatants."

The Court concluded that the DTA review was not an adequate substitute for a habeas petition. Fundamentally, a habeas proceeding must offer to the petitioner an effective and meaningful ability to correct any errors in the decision under review (here, the determination that the petitioner is an "enemy combatant"), an opportunity to challenge the sufficiency of the government's evidence, and the opportunity to present and have a court consider exculpatory evidence not considered by the tribunal below. DTA review fails to provide for release from custody as a remedy, offers no procedures for petitioners to present new, exculpatory evidence and to bring the full range of legal challenges available in a habeas proceeding.

The justification of the judges explains that: "our opinion does not address the content of the law that governs petitioners' detention. That is a matter yet to be determined. We hold that petitioners may invoke the fundamental procedural protections of habeas corpus. The laws and Constitution are designed to survive, and remain in force, in extraordinary times. Liberty and security can be reconciled; and in our system they are reconciled within the framework of the law. The Framers decided that habeas corpus, a right of first importance, must be a part of that framework, a part of that law". Furthermore the motivation affirms that the decision "does not undermine the executive's powers as commander in chief. On the contrary, the exercise of those powers is vindicated, not eroded, when confirmed by the judicial branch. Within the Constitution's separation-of-powers structure, few exercises of judicial power are as legitimate or as necessary as the responsibility to hear challenges to the authority of the executive to imprison a person".

In the decision of the U.S. Supreme Court, however, some aspects remain unclear, namely:

1. whether detainees or their counsel will be able to see classified evidence introduced by the government or require the government to produce live witnesses rather than rely on hearsay;
2. the legality of the criteria used by the government to decide whether a arrested person at Guantanamo should be subject to ongoing military detention.

There are also two dissenting opinions written by Chief Justice Roberts and Justice Scalia. Chief Justice Roberts's dissent asserts that Congress has designed a system that protects "whatever rights the detainees may possess," and that the Court should therefore not even be reviewing this case. Justice Scalia's dissent asserts further that "aliens abroad" are not entitled to the protection of the writ of habeas corpus, and have never been.

In order to examine the full aspects of the decision, see:

- Supreme Court Holds that Noncitizens Detained at Guantanamo Have a Constitutional Right to Habeas Corpus Review by Federal Civilian, available at: <http://www.asil.org/insights/2008/06/insights080620.html>
- Legal Analysis: *Boumediene v. Bush/Al Odah v. United States*, <http://www.ccrjustice.org/learn-more/faqs/legal-analysis%3A-boumediene-v.-bush/al-odah-v.-united-states>

(Davide Giovanelli)

INTERESTING PUBLICATIONS - PUBLICATIONS INTERESSANTES

Notes:

The publications marked with * have been offered by their publishers to the documentation centre of the International Society, where our members can consult them. A separate book review will be published in the *Military Law and the Law of War Review* 2008.

The publications marked with ** have been purchased by the documentation centre of the International Society.

hb = hardback pb = paperback.

Roberta ARNOLD (Ed.), *Law enforcement within the framework of PSO*, The Hague, Martinus Nijhoff, June 2008, 475 p. ISBN 978-90-04-16510-6, (HB) 125 euro, <http://www.brill.nl>

Roberta ARNOLD & Noelle QUÉNIVET (Eds.), *International humanitarian law and human rights law: towards a new merger in international law*, The Hague, Martinus Nijhoff, July 2008, ISBN 978-90-04-16317-1, (HB), 160 euro, <http://www.brill.nl>

Neil BOISTER & Robert CRYER, *The Tokyo International Military Tribunal. A Reappraisal*, Oxford University Press, March 2008, 376 p., ISBN 978-0-19-927852-7, 60 GBP (HB), www.oup.com

Neil BOISTER & Robert CRYER, *Documents on the Tokyo International Military Tribunal*, Oxford University Press, June 2008, 1568 p., ISBN 978-0-19-954192-8, 125 GBP (Pack), www.oup.com

Grégory BOUTHERIN (ed.), *Europe Facing Nuclear Weapons Challenges*, Bruylant, 2008, 230 p., ISBN 978-2-8027-2562-6 (PB), 55 euro, www.bruylant.be

Rachel BZOSTEK, *Why Not Preempt ? Security, Law, Norms and Anticipatory Military Activities*, Ashgate, April 2008, 266 p., ISBN 978-0-7546-7057-5 (HB), 55 GBP, www.ashgate.com

Paige Whaley EAGER, *From Freedom Fighters to Terrorists. Women and Political Violence*, Ashgate, April 2008, 248 p., ISBN 978-0-7546-7225-8 (HB), 55 GBP, www.ashgate.com

George FLETCHER, *Tort liability for civil rights abuses*, Hart Publishers, May 2008, 144 p., ISBN 9781841137940, 20 GBP, www.hartpub.co.uk

Paola GAETA & Salvatore ZAPPALA (eds.), *The Human Dimension of International Law. Selected Papers of Antonio Cassese*, Oxford, June 2008, 622 p., ISBN-13: 978-0-19-923291-8, 70 GBP (HB), www.oup.com

Hans GIESSMANN & Götz NEUNECK (Hrsg.), *Streitkräfte zähmen, Sicherheit schaffen, Frieden gewinnen. Festschrift für Reinhard Mutz*, Nomos Verlag, 2008, 332 p., 69 EURO, ISBN 978-3-8329-3608-2 (PB), www.nomos.de

Ian HENDERSON, *Targeting during armed conflict: a legal analysis*, PhD thesis, University of Melbourne, 2007, <http://repository.unimelb.edu.au/10187/2232>

Krista HUNT (ed.), *(En)Gendering the War on Terror. War Stories and Camouflaged Politics*, Ashgate, December 2007, 252 p., 25 GBP, ISBN 978-0-7546-7323-1 (PB), www.ashgate.com

Vaughan LOWE & Stefan TALMON (eds.), *The legal order of the Oceans. Basic Documents on the law of the sea*, Hart Publishers, May 2008, 722 p., ISBN 9781841138237 (PB), 45 GBP, www.hartpub.co.uk

Vaughan LOWE, Adam ROBERTS, Jennifer WELSH & Dominik ZAUM, *The United Nations Security Council and War. The Evolution of Thought and Practice since 1945*, Oxford, June 2008, 816 p., ISBN-13: 978-0-19-953343-5, 90 GBP (HB)

Lars MAMMEN, *Völkerrechtliche Stellung von internationalen Terrororganisationen*, Nomos Verlag, 2008, 342 p., 54 EURO, ISBN 978-3-8329-2778-3 (PB), www.nomos.be

Nils MELZER, *Targeted Killing in International Law*, Oxford, May 2008, 522 p., ISBN-13: 978-0-19-953316-9, 65 GBP (HB), www.oup.com

Laurent MUTATA, *Traité de crimes internationaux*, Editions Universitaires Africaines (Kinshasa), avril 2008, 60 USD

* Hector OLASOLO, *Criminal responsibility of political and military leaders for genocide, crimes against humanity and war crimes*, Hart Publishers, May 2008, 256 p., ISBN 9781841136950 (HB), 50 GBP, www.hartpub.co.uk

Hector OLASOLO, *Unlawful Attacks in Combat Situations. From the ICTY's Case Law to the Rome Statute*, Martinus Nijhoff, 2008, 20+292 p., ISBN-13 : 978 90 04 16200 6, 100 euro/140 USD (HB), www.brill.nl

Paul ROBINSON, Nigel DE LEE & Don CARRICK (eds.), *Ethics Education in the Military*, Ashgate, April 2008, 224 p., ISBN 978-0-7546-7114-5, 65GBP, www.ashgate.com

* Werner SCHERER, Richard ALFF & Alexander PORETSCHKIN, *Soldatengesetz. Kommentar*, 8. Auflage, Verlag Franz Vahlen, 2008, 14+74 p., ISBN 978-3-8006-3333-3 (HB), 75 euro, www.beck.de

Stefan SOTTIAUX, *Terrorism and the Limitation of Rights. The ECHR and the US Constitution*, Hart publishers, February 2008, 472 p., ISBN ISBN 1841137634/9781841137636 (HB), 55 GBP, www.hartpub.oc.uk

Natalia SPRINGER, *Die Deaktivierung des Krieges. Zur Demobilisierung von Gesellschaften nach Bürgerkriegen*, Nomos Verlag, 2008, 329 p., 39 euro, ISBN 978-3-8329-2283-2 (PB), www.nomos.de

Otto TRIFFTERER (ed.), *Commentary on the Rome Statute of the International Criminal Court. Observers' Notes, Article by Article*, 2nd ed., Nomos Verlag, May 2008, 1295 p., 298 euro, ISBN 3-7890-6173-5, www.nomos.de

(Stanislas Horvat, Director of the Documentation Centre/
Directeur du Centre de Documentation)

FROM THE GENERAL SECRETARIAT

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