



NEWSLETTER JULY/AUGUST/SEPTEMBER 2008

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INTRODUCTION

Dear reader,

The Boards of the Society have made a clear choice to invest in building partnerships with other organizations striving for similar objectives. The Society strongly believes that more cooperation with like minded organizations can lead to more action and results for each partner involved, while respecting or even enhancing every partner's specificity.

Our stands put up in September on the occasion of the Round Table of the International Institute of Humanitarian Law in San Remo as well as the Course on Advanced Principles of Humanitarian Law and Policy organised by HPCR International in Brussels, are just two examples of the implementation of this policy. Also for future projects the Society will look for more cooperation.

Therefore I would like to invite you to share with us possible concrete forms of cooperation with other partners you are familiar with and which could contribute to common objectives. The General Secretariat will note any proposal in this respect and submit it for examination to the relevant Board of the Society.

Ludwig Van Der Veken
Secretary-General

NEWS, ANNOUNCEMENTS OF CONFERENCES, SEMINARS, ETC.

The **XVIIIth Congress of the Society** will be held in Tunis from 5 to 9 May 2009. A delegation of the Society has recently paid a preparatory visit to the Congress facilities. The Society has also appointed Prof. Dr. Wolff Heintschel von Heinegg and Mrs. Cecilie Hellestveit as General Rapporteurs of the XVIIIth Congress. The invitations to attend the XVIIIth Congress will soon be sent.

Call for submissions for the 2009 Ciardi Prize

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, 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 whether in English, French, German, Italian or Spanish.

The Jury will be presided over by Doctor Giovanna Ciardi. Other four members are going to 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. The Society has designated Dr. Dieter Fleck (Honorary President of the Society) and Mr. Bruce Oswald (Member of the Board of Directors of the 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 SOCIETE INTERNATIONALE DE DROIT MILITAIRE ET DE DROIT DE LA GUERRE, Avenue de la Renaissance 30 -1000 BRUSSELS/BRUXELLES, BELGIUM/BELGIQUE - General Secretariat/Secrétariat général.

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 *Military Law and the Law of War Review* and the articles published by the same *Review*, after having sought the consent of the 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.

See http://home.scarlet.be/~ismlw/ciardi/ciardi_2009.pdf

The NATO School, in cooperation with the Istituto Superiore Nazionale di Scienze Criminali, will host a **Seminar on Shari'a Law and Military Operations** from 15 to 19 December 2008. For more information, see attached notification and preliminary schedule.

The International Committee of the Red Cross and the Interparliamentary Assembly of the Commonwealth of Independent States will be organizing an **International Conference on International Humanitarian Law, dedicated to the 140th Anniversary of the 1868 Saint-Petersburg Declaration**. The conference will be held at Tavrisheskiy Palace in Saint-Petersburg on 25 November 2008. Dr. Dieter Fleck, honorary President of the Society, as well as Mr. Alfons Vanheusden, Assistant Secretary-General of the Society, will participate in a panel on *achieving effective implementation of international humanitarian law as it relates to the conduct of hostilities*.

On 13-14 November 2008, the Washburn University School of Law Center for Law and Government and the Washburn Law Journal will host a **symposium on "The Rule of Law and the Global War on Terrorism: Detainees, Interrogations, and Military Commissions"**. Program description: the United States Constitution was founded on the Rule of Law. The Global War on Terrorism has tested the limits of US constitutional values and has posed unprecedented challenges for the U.S. legal system. Throughout these difficult times, the federal courts have been instrumental in upholding the Rule of Law. The Rule of Law and the Global War on Terrorism Symposium will examine legal implications of governmental actions taken in response to the attacks of September 11, 2001. Speakers and participants will reevaluate and

reassess these complex issues to explore possible ways forward as the US prepares for a new administration. For more information, see: <http://washburnlaw.edu/ruleoflaw/>

On 6 November 2008, The Danish Institute for Military Studies (DIMS) will host a **Conference on "Lawfare – legal arguments in debates on war and peace"**. Program description: legal arguments play an increasing role in debates on war and peace. Organized by the Danish Institute for Military Studies (DIMS) this conference on Lawfare will raise questions such as: to what degree do legal considerations limit the room for political decision-making about war? How is the growing role played by legal arguments reflected in contemporary debates about war and peace? What is the reason for the growing role played by those legal arguments? And what does the increased significance of legal arguments tell us about the relationship between the legal and political world? By addressing these and related questions, the conference seeks to explore the relationship between law and legal discourse on the one hand and policy-making on war and peace on the other in the 21st century. For more information, see: <http://www.difms.dk/>

The Netherlands Ministry of Defence will be organizing an **International Conference in Amsterdam on "Emerging Military Technologies, Ethics and Leadership"**, from 5 to 7 November 2008. Aspects of international humanitarian law and human rights law in relation to emerging military technologies will also be dealt with during the conference. For more information, please, contact Mrs Marieke Berendsen (marieke@mbproject.nl).

On 25 September 2008, the Catholic University of America Columbus Law School and the American Membership of the International Society for Military Law and the Law of War organized a **Conference on "Peacekeeping Operations: The Legal Dimension"**. Program description: in 1988 there were four peacekeeping operations; in 2008 there are 20, with a concurrent demand for peacekeeping forces. The United States and its G8 partners are committed to train and equip 75,000 peacekeepers worldwide by 2010. This program will address two aspects of that growth. The morning session will address the sources and application of legal authority to investigate and punish crimes allegedly committed by civilians accompanying armed forces. The afternoon session will focus on training peacekeepers to meet international legal norms, primarily in Africa because of the number of peacekeeping missions needed there. For more information, see: <http://law.cua.edu/PDF%20Documents/2008%20PDF%20Documents/Summer-Fall//Peacekeeping%20Operations%202.pdf>.

On 19 September 2008, a **conference entitled "Looking Past Guantanamo: Are New Concepts Needed for Terrorist-Related Detentions?"** was cosponsored by American University's Washington College of Law, the National Institute of Military Justice and the Federalist Society, in cooperation with the ABA Section of International Law National Security Committee. For more information, see: <http://www.wcl.american.edu/secl/fall/2008/documents/BeyondGuantanamoConferenceFlyer.091908.pdf?rd=1>.

On 15 September 2008, Richard J. Goldstone, former Justice of the Constitutional Court of South Africa, Chief Prosecutor of the United Nations International Criminal Tribunal for the former Yugoslavia and Rwanda gave talk at Harvard University Weatherhead Center for International Affairs on **"The State and Future of International Criminal Law"**. For more information, see: <http://www.wcfia.harvard.edu/node/3410>.

The **XXXIst Round Table of the International Institute of Humanitarian Law** in San Remo ran from 4 to 6 September 2008. The Round Table on International Humanitarian Law and Human Rights in Peace Operations, gathering together more than 400 experts, national representatives and international officials was organized in cooperation with the International Committee of the Red Cross. It represented an important moment of aggregation for the international community and it offered an opportunity for free and constructive debate on

the most current and important issues regarding international humanitarian law and its applicability in peacekeeping operations, to professionals of multilateral diplomacy, representatives of NATO, European Union, UNHCR, IOM, United Nations and other international organizations, members of the Red Cross and Red Crescent Societies, experts, researchers and representatives of NGOs. The President of the International Society for Military Law and the Law of War (Mr. Arne Willy Dahl) and the Director of Publications of the Society (Mr. Frederik Naert) presented their views on the theme during the Round Table. The Society also displayed its recent publications at a stand.

HPCR International ran a **Course on Advanced Principles of Humanitarian Law and Policy** in Brussels from 15 to 17 September 2008. The Society displayed its recent publications at a stand.

On 25-26 August 2008, The Jackson Center co-sponsored the **2nd annual International Humanitarian Law Dialogs**, a historic gathering at Chautauqua Institution of international prosecutors from Nuremberg through present day tribunals. The Dialogs, held in this 60th anniversary year of the United Nations' adoption of the Genocide Convention, addressed issues of international law and criminality, including ethnic cleansing, forced service of children in wars, and how international courts identify the perpetrators of such crimes and bring them to justice. The Dialogs culminated, as did last summer's inaugural gathering, with a Chautauqua Declaration by the prosecutors. For more information, see: <http://www.roberthjackson.org/events/2ndannualdialogs/>.

On 17 July 2008, an event was held at the United Nations Headquarters in New York, in **Commemoration of the 10th anniversary of the adoption of the Rome Statute of the International Criminal Court**. The event included a panel discussion on "International Criminal Justice ten years after Rome – prospects for the next decade" and speeches by dignitaries such as H.E. Mr. Ban Ki-moon (Secretary-General of the United Nations), Mr. Philippe Kirsch (President of the International Criminal Court) and Mr. Luis Moreno Ocampo (Prosecutor of the International Criminal Court). To view the program as well as a videotaping of the ceremony, visit <http://www.un.org/webcast/SE2008.html> (UN Webcast Archives).

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 Organizations

UN Security Council

On 16 June 2008, the Security Council issued presidential statement S/PRST/2008/21 (<http://www.un.org/News/Press/docs//2008/sc9359.doc.htm>) calling on Sudan to cooperate with the International Criminal Court (ICC). Although Sudan is not a party to the Statute, it is obliged to fulfil its obligations under the Security Council Resolution 1593, which referred the Darfur situation to the ICC. The Sudanese Government opposed the Resolution. The Security Council and the ICC have repeatedly called upon Sudan to comply with Resolution 1593 and have urged Sudan to arrest and surrender the former Sudanese Minister of the Interior Ahmed Muhammad Harun and the former militia leader Ali Kushayb, both suspected of war crimes. See <http://jurist.law.pitt.edu/paperchase/2008/06/sudan-must-work-with-icc-on-darfur.php> and <http://www.un.org/apps/news/story.asp?NewsID=27040&Cr=darfur&Cr1=>.

On 19 June 2008, after a day-long ministerial-level meeting on "women, peace and security", the Security Council unanimously adopted Resolution 1820 condemning the use of sexual violence against civilians as war tactics and demanding that warring parties immediately stop using sexual violence. The Security Council *inter alia*:

"Stresses that sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security" and

"Demands that all parties to armed conflict immediately take appropriate measures to protect civilians, including women and girls, from all forms of sexual violence, which could include, inter alia, enforcing appropriate military disciplinary measures and upholding the principle of command responsibility, training troops on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence, vetting armed and security forces to take into account past actions of rape and other forms of sexual violence, and evacuation of women and children under imminent threat of sexual violence to safety; and requests the Secretary-General, where appropriate, to encourage dialogue to address this issue in the context of broader discussions of conflict resolution between appropriate UN officials and the parties to the conflict, taking into account, inter alia, the views expressed by women of affected local communities;"

The Security Council further proclaimed that the resolution will bring stability and safety to especially the female participants of the armed conflicts and demanded accountability. Additionally, the resolution calls on Ban to report back to the Security Council next year on the resolution's implementation. See:

<http://www.un.org/News/Press/docs/2008/sc9364.doc.htm> and
http://afp.google.com/article/ALeqM5jPx7gckgdtzXEHiN8Z_iOaFCOURA.

(Janina Bollmann, Voluntary Collaborator)

Other relevant UN Security Council resolutions are:

- Resolution 1824: extends terms of office for ICTR judges (18 July 2008)
- Resolution 1827: Terminates Mandate of United Nations Mission in Ethiopia and Eritrea (30 July 2008)
- Resolution 1828: Renews the Mandate of the African Union-United Nations Hybrid Operation in Darfur (31 July 2008)
- Resolution 1829: Establishes the United Nations Integrated Peacebuilding Office in Sierra Leone (4 August 2008)

International Atomic Energy Agency

On 1 August 2008 the International Atomic Energy Agency Board approved the India-Safeguards Agreement.

International(ised) Courts

ICJ

In relation to the war between Georgia and Russia, one may note the following:

- Georgia files application alleging Russian breach of the Convention on the Elimination of All Forms of Racial Discrimination (12 August 2008)
- Request by Georgia for the Indication of Provisional Measures (14 August 2008)
- Hearing on Provisional Measures (8-10 September 2008)

ICC¹

On 3 July 2008, Jean-Pierre Bemba, charged by the International Criminal Court with multiple counts of war crimes and crimes against humanity, including murder and rape, was transferred by Belgian authorities to the Court's detention centre in The Hague. Prosecutor Moreno-Ocampo welcomed the transfer of Mr. Bemba: "*Justice is coming for the victims, for the victims of the Central African Republic, for the victims of massive sexual violence worldwide. We listened to them, and we transformed their painful stories into evidence. There will be no impunity. Jean-Pierre Bemba was a Vice-President and is a Senator, but has no immunity before the International Criminal Court; he will face justice.*"

See <http://www.icc-cpi.int/press/pressreleases/396.html>

On 7 July 2008, the Appeals Chamber of the International Criminal Court granted the suspensive effect of the Prosecution's appeal against "*Decision on the release of Thomas Lubanga.*" Therefore the accused will remain under custody of the ICC pending the final decision on the appeal. On 2 July 2008 Trial Chamber I ordered the release of Mr. Thomas Lubanga. According to the Judges, the release was the "*logical consequence*" of the stay on the proceedings imposed on 13 June 2008, as it is at present impossible to secure a fair trial for the accused. No finding was made so far as to his guilt or innocence. However, the order granting release should not be enforced until the expiry of the five day time-limit for the filing of the appeal. Prosecution filed an appeal against this decision and requested Urgent Application for Suspensive Effect of the appeal on 2 July 2008. On 3 September 2008 the Trial Chamber rejected the Prosecutor's application to lift the stay of proceedings in the Lubanga Case.

See <http://www.icc-cpi.int/press/pressreleases/400.html>

On 14 July 2008, ICC Prosecutor Luis Moreno-Ocampo presented evidence to show that Sudanese President, Omar Hassan Ahmad Al Bashir committed the crimes of genocide, crimes against humanity and war crimes in Darfur. Three years after the Security Council requested him to investigate in Darfur, and based on the evidence collected, the Prosecutor concluded there are reasonable grounds to believe that Omar Hassan Ahmad Al Bashir bears criminal responsibility in relation to 10 counts of genocide, crimes against humanity and war crimes. The Prosecution evidence is said to show that Al Bashir masterminded and implemented a plan to destroy in substantial part the Fur, Masalit and Zaghawa groups, on account of their ethnicity. Members of the three groups, historically influential in Darfur, were challenging the marginalization of the province; they engaged in a rebellion. "*His motives were largely political. His alibi was a 'counterinsurgency.'* *His intent was genocide.*" The Prosecutor said.

See <http://www.icc-cpi.int/press/pressreleases/406.html>

On 20 August 2008, the ICC Prosecutor confirmed that the situation in Georgia is under analysis. In the wake of recent events in Georgia and in light of information related to the alleged commission of crimes under ICC jurisdiction, ICC Prosecutor Luis Moreno Ocampo confirmed that the situation in Georgia is under analysis by his Office. "*Georgia is a State Party to the Rome Statute*" he said. "*My Office considers carefully all information relating to alleged crimes within its jurisdiction – war crimes, crimes against humanity and genocide - committed on the territory of States Parties or by nationals of States Parties, regardless of the individuals or groups alleged to have committed the crimes. The Office is inter alia analyzing information alleging attacks on the civilians.*" The Office of the Prosecutor has been closely monitoring all information on the situation in Georgia since the outbreak of violence in South Ossetia in early

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

August, including information from public sources. An official from the Georgian government met with the Division of the Jurisdiction, Complementarity and Co-operation of the Office to offer information and co-operation. The Russian Federation has formally delivered information to the Office of the Prosecutor and is continuing to do so. The Office will proceed to seek further information from all actors concerned.

See <http://www.icc-cpi.int/press/pressreleases/413.html>

On Friday 29 August 2008, the Presidency of the ICC, composed of the President, Judge Philippe Kirsch, and the two vice-presidents, Judge Akua Kuenyehia and Judge René Blattmann, decided that Judge Daniel Nsereko shall replace Judge Navanethem Pillay in the Appeals Chamber as from 1 September 2008. Judge Navanethem Pillay resigned from the ICC, with effect from 31 August 2008, on her appointment as UN High Commissioner for Human Rights by the UN Secretary-General. The Appeals Chamber is currently composed of Judge Philippe Kirsch, Judge Georghios M. Pikis, Judge Sang-Hyun Song, Judge Erkki Kourula and Judge Daniel Nsereko.

<http://www.icc-cpi.int/press/pressreleases/416.html>

On Tuesday 9 September 2008, the judges meeting in plenary session elected by an absolute majority Mr. Didier Preira of Senegal as Deputy Registrar of the International Criminal Court for a five-year term, in accordance with the procedure laid down in the Rules of Procedure and Evidence. He will take up his functions at a date to be determined shortly.

<http://www.icc-cpi.int/press/pressreleases/421.html>

(Nicolas Lange)

ICTY

On 1 July 2008, Mr. Norman Farrell takes up his duties as Deputy Prosecutor of the Tribunal, following his appointment by the UN Secretary-General Ban Ki-Moon. Norman Farrell joined the ICTY's Office of the Prosecutor in 1999 as Appeals Counsel for the Offices of the ICTY and the ICTR. In 2002, he was appointed Senior Appeals Counsel and Head of the Appeals Section in the Office of the Prosecutor of both Tribunals. In 2005, Farrell was appointed the Principal Legal Officer in ICTY's Office of the Prosecutor. Before joining the Tribunal, Norman Farrell worked for the International Committee of the Red Cross (ICRC) in several capacities: as a Delegate and Coordinator in charge of the dissemination of International Humanitarian Law in Bosnia and Herzegovina; a Legal Advisor on International Humanitarian Law in Addis Ababa, Ethiopia; and an Advisor on International Criminal Law and International Humanitarian Law in Geneva, Switzerland. From 1988 until 1996 he was Crown Counsel (Criminal Division) with the Attorney General for the Province of Ontario, in Toronto, Canada.

See <http://www.un.org/icty/latest-e/index.htm>

On 3 July 2008, the Appeals Chamber acquitted Naser Orić, a former commander of Bosnian Muslim forces in and around Srebrenica, of crimes committed during the 1992-1995 conflict. On 30 June 2006, the Trial Chamber found that Orić was guilty of failing to take necessary and reasonable measures to prevent the murder and cruel treatment of a number of Bosnian Serbs held at the Srebrenica Police Station and a building behind the Srebrenica municipal building in the period between 27 December 1992 and 20 March 1993. The Trial Chamber acquitted the accused of a number of other alleged crimes. It sentenced Orić to two years' imprisonment. Both the Prosecution and the Defence appealed the judgement. 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. "Naser Orić's entire conviction rested on that mode of liability", the Presiding Judge Wolfgang Schomburg said. "These errors therefore invalidate the Trial Chamber's decision to convict Naser Orić for his failure to prevent his subordinate's alleged criminal conduct." None of the Prosecution's grounds of appeal was allowed. The Presiding Judge emphasized that before the International Tribunal a Chamber has to decide solely based on the evidence brought before it by the parties. The Appeals Chamber had explicitly asked the Prosecution whether it could point to additional evidence not assessed by the Trial Chamber. However, the Prosecution was not in a position to do so. 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 Appeals Chamber found.

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

On 10 July 2008, trial Chamber II sentenced Johan Tarčulovski to 12 years of imprisonment for crimes committed against ethnic Albanians in village of Ljuboten, near the Macedonian capital Skopje, on 12 August 2001. His co-accused, the former Macedonian Interior Minister, Ljube Boškoski, was acquitted of all charges. The crimes alleged took place in Ljuboten between 12 and 15 August 2001 when a Macedonian police unit under Tarčulovski's command entered the village, shooting and killing six unarmed ethnic Albanians, as well as severely mistreating 13 other residents. Ten of those were further beaten at a police checkpoint at the entrance to the village and later at the Mirkovci police station in Skopje, as a result of which one of the men died.

See <http://www.un.org/icty/pressreal/2008/pr1270e-summary.htm>

On 10 July 2008, the Trial Chamber reinstated the provisional release for Mićo Stanišić effective 14 July. The accused is to stay on provisional release until the Trial Chamber decides to recall him to the UN Detention Unit. As a former Interior Minister of the wartime Bosnian-Serb controlled area of Bosnia and Herzegovina, Stanišić is charged with murder, persecutions, torture and extermination of Bosnian Muslim and Bosnian Croat populations between 1 April and 31 December 1992 in the northeast of the country. Stanišić was granted provisional release on 19 July 2005. On 11 April 2008, the provisional release was suspended and the accused was ordered to return to The Hague by 2 May in order to attend a hearing on 6 May 2008.

See <http://www.un.org/icty/cases-e/cis/stanisc/cis-micostanisc.pdf>

On 17 July 2008, the Appeals Chamber today convicted the former Yugoslav People's Army (JNA) General Pavle Strugar for two additional counts, the crime of devastation not justified by military necessity and the crime of unlawful attacks on civilian objects in Croatia's coastal town of Dubrovnik in 1991. The Chamber also extended his criminal responsibility for his failure to prevent the shelling of the Old Town. On 31 January 2005, Strugar was sentenced to eight years' imprisonment for his involvement in the military campaign against the Dubrovnik region in 1991. The Trial Chamber convicted him, pursuant to his superior responsibility, of two of the six counts included in the indictment: attacks on civilians and destruction or willful damage of the UNESCO protected town of Dubrovnik. The Trial Chamber found that Strugar had *de jure* and *de facto* control of the JNA forces which conducted the military action in Dubrovnik, including the shelling of the Old Town. The shelling "was not a response at Croatian or other military positions, actual or believed, and ... it caused considerable damage to the Old Town". Two civilians were killed and two injured during the shelling. Both the Prosecution and the Defence appealed the Trial Judgement.

See <http://www.un.org/icty/cases-e/cis/strugar/cis-strugar.pdf>

On 21 July 2008, the Tribunal confirms that it has been advised of the arrest by Serb authorities of the former Bosnian Serb political leader Radovan Karadzic. The Tribunal welcomed the arrest. This arrest may be considered another milestone in the development of international law and further fulfillment of the Tribunal's mandate to bring to justice the most senior persons alleged to be most responsible for war crimes in the Yugoslav conflicts.

See <http://www.un.org/icty/cases-e/cis/mladic/cis-karadzicmladic.pdf>

On 24 July 2008, Trial Chamber I convicted Kosovo journalist Baton Haxhiu of contempt of Tribunal committed during the trial of the former Kosovo Albanian military leader Ramush Haradinaj and fined him 7,000 euros. Haxhiu revealed information about a witness who testified under protective measures during the trial of Ramush Haradinaj and others. In contravention of a Trial Chamber order, Haxhiu revealed the identity of the witness, as well as his supposed whereabouts in an article he wrote and published in Kosovo. The Trial Chamber was satisfied that Haxhiu revealed this information despite knowledge that he would be in violation of a court order. *"The Accused's conduct could have jeopardized the security of the Witness and his family and was of a kind to undermine confidence in the effectiveness of the Tribunal's protective measures orders, and to have the effect of dissuading witnesses from cooperating with the Tribunal,"* Judge Alfons Orié said.

See <http://www.un.org/icty/glance/cis-haxhiu.pdf>

On 30 July 2008, Prosecutor Serge Brammertz made a Statement on the transfer of Radovan Karadžić: *"Radovan Karadžić, the former leader of Bosnian Serbs, is here to stand trial for crimes committed during the conflict in Bosnia and Herzegovina in the early 1990s. He is indicted for the most serious crimes under international law: genocide, crimes against humanity and war crimes. He is charged with the ethnic cleansing of non-Serbs from large areas of Bosnia and Herzegovina through the commission of the crimes alleged in the indictment. He is charged with a campaign of shelling and sniping to terrorise the civilian population of Sarajevo. He is also charged with the genocide committed in Srebrenica in July 1995 when close to 8,000 Bosnian Muslim men and boys were killed. In addition, he is charged with taking UN peacekeepers and military observers hostage. The Prosecution intends to proceed against Radovan Karadžić on these charges. My team is currently reviewing the indictment which was last amended in 2000. We will ensure that it reflects the current case law, facts already established by the court and evidence collected over the past eight years."*

See <http://www.un.org/icty/pressreal/2008/pr1278e.htm>

On 5 September 2008, The Tribunal's Outreach programme took part in a conference addressing war crimes committed in north-eastern town of Brčko during the conflict in Bosnia and Herzegovina. The conference, Brčko '92 – Beyond Reasonable Doubt, took place in Belgrade and provided representatives of the Tribunal's Outreach programme and Prosecution with an opportunity to present facts established in trials before the Tribunal. This is the fifth such conference organised by the Belgrade-based NGO Humanitarian Law Center in cooperation with ICTY Outreach with the aim of bringing the work of the Tribunal closer to the general public in Serbia. Audiences in Serbia have already been able to familiarise themselves with the trials and facts established by the Tribunal about the genocide in Srebrenica and crimes in Prijedor, Foča, and the Čelebići camp. Two ICTY indictees pleaded guilty to crimes committed in Brčko. Goran Jelisić aka Serb Adolf was sentenced to 40 years and Ranko Češić to 18 years' imprisonment.

See <http://www.un.org/icty/pressreal/2008/pr1280e.htm>

On 10 September 2008, Milan Milutinović has been granted temporary provisional release to return to Serbia to undergo a medical procedure from 10 September to 2 October 2008. Milutinović's temporary release is subject to a number of strict conditions, including 24-hour electronic surveillance of the accused by Serbian authorities. Milutinović was the President of Serbia from 1997 to 2002. He is on trial together with five co-accused, Nebojša Pavković, Nikola Šainović, Dragoljub Ojdanić, Vladimir Lazarević and Sreten Lukić, for an alleged campaign of terror and violence directed against Kosovo Albanians and other non-Serbs living in Kosovo in 1999. All have been charged with deportation, forcible transfer, murder and persecutions of thousands of Kosovo Albanians and other non-Serbs. The trial commenced on 10 July 2006. The Prosecution completed its case-in-chief on 1 May 2007, following which the Trial Chamber dismissed all Defence motions for acquittal for each of the accused. The Defence case started on 6 August 2007 and finished on 16 May 2008. The closing arguments were held from 19 to 27 August 2008.

See <http://www.un.org/icty/pressreal/2008/pr1281e.htm>

(Nicolas Lange)

Some other relevant decisions are:

- Serbia Reported to the Security Council for Noncompliance (17th June)
- ICTY: Trial Chamber Judgment in the Case Against Ljubiša Petković (11th September)
- ICTY: Trial Chamber Judgment in the Case Against Rasim Delić (15th September)

ICTR

On 18 July 2008, the ICTR granted leave to Rwanda to file an *amicus curiae* brief, to be submitted within 10 days of the filing of the Decision and to be no longer than 10 pages in length. ICTR was seized of a "*Request of the Republic of Rwanda for Permission to File an Amicus Curiae Brief Concerning the Prosecutor's Appeal of the Denial by Trial Chamber III, of the Request for Referral of the Case of Yussuf Munyakazi to Rwanda Pursuant to Rule 11 bis of the Rules*".

See <http://69.94.11.53/ENGLISH/cases/Munyakazi/decisions/080718.pdf>

The trial of a former senior officer in the Rwandan Armed Forces and Director of the Judicial Affairs Division of the Rwandan Ministry of Defence, Lieutenant-Colonel Ephrem Setako, began on 25 August 2008 before Trial Chamber I composed of Judges Erik Møse, presiding, Sergei Alekseevich Egorov and Florence Rita Arrey. In its opening statement, the Prosecution told the Trial Chamber that it would present 25 witnesses who will testify and prove beyond reasonable doubt that the accused was one of the principal planners and executors of the genocide in Rwanda in 1994. Based on his seniority and close association with other high ranking military officers, politicians in President Juvénal Habyarimana's government, civilian authorities, businessmen and leaders of militia groups, Setako is alleged to have formed part of a joint criminal enterprise to eliminate Tutsis at various places throughout Rwanda between 7 April and July 1994. Senior Trial Attorney Ms. Ojemeni Okali stated that the accused allegedly committed these crimes despite the fact that he was a highly educated and privileged person who was a lawyer as well as a soldier. Defence Counsel Professor Lennox Hinds indicated that he did not wish to make an opening statement at this stage. However, he cautioned the Trial Chamber to seek the truth as far the allegations against the accused were concerned. Lieutenant-Colonel Setako (59) is charged with six counts of genocide, or alternatively complicity in genocide, crimes against humanity (murder and extermination), as well as violations of Article 3 common to the Geneva Conventions and Additional Protocol II. The accused pleaded not guilty to all counts on 22 November 2004. The Prosecution alleges that the accused, who was born in Nkuli Commune, Ruhengeri Prefecture, planned, instigated, ordered and participated in killing of Tutsi civilians in Ruhengeri and Kigali-ville

prefectures. He is also alleged to have distributed arms to members of the Rwanda Armed Forces, the Presidential Guard, the *Interahamwe*, the *Amahindure* (Civil Defence Forces), and other soldiers engaged in the killings. The accused was arrested on 25 February 2004 in Amsterdam, The Netherlands and transferred to the United Nations Detention Facility on 17 November 2004 at the request of the Tribunal.

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

(Nicolas Lange)

Some other relevant decisions are:

- Denial of Request to Transfer Hategekimana's Case to Rwanda (19 June 2008)
- Appeals Chamber Judgment in the Case Against Muvunyi (29 August 2008)

SPECIAL COURT FOR SIERRA LEONE (SCSL)²

On 4 July 2008, Justice Boutet has been elected to a one-year term as Presiding Judge of Trial Chamber I. He succeeds Justice Benjamin Itoe of Cameroon. Justice Boutet previously served as Presiding Judge of Trial Chamber I from 27 May 2005 to 19 June 2006.

On 5 August 2008, the Judges of Trial Chamber I heard closing arguments in the trial of three former leaders of Sierra Leone's Revolutionary United Front (RUF). In two days of submissions, lawyers for the Prosecution and for the Accused – Issa Sesay, Morris Kallon and Augustine Gbao – made presentations to the Court and answered questions relating to evidence presented in the trial, and to the application of law. During the trial, which opened in Freetown on 5 July 2004, the Judges heard evidence from 85 witnesses called by the Prosecution and an equal number called by the Defence. The final witness testified on 25 June 2008 as the Defence case came to an end.

Deputy Registrar Binta Mansaray hailed the closing arguments as a "significant milestone" for the Special Court as it works to complete its mandate. "It has been a long process to get to where we are today, but the fact that the closing arguments took place on schedule marks an important step in the life of the Court", Ms. Mansaray said. "By showing that justice can be delivered on time and in accordance with the highest standards of international law, we will not only have lived up to our mandate, but we will also have left a legacy in law for the people of Sierra Leone". The Judges will now retire to consider their Judgment in the case. A Trial Judgment is expected later this year.

The RUF trial is the last of three Special Court trials held in Freetown. The trials of three former members of the Armed Forces Revolutionary Council (AFRC) and two members of the Civil Defence Forces (CDF) are complete, including sentencing and appeals.

The Special Court's trial of former Liberian President Charles Taylor is continuing in The Hague. Since it got underway in January, the Court has heard testimony from 35 Prosecution witnesses.

See <http://www.sc-sl.org/Press/pressrelease-080508.pdf>

(Nicolas Lange)

Extraordinary Chambers in the Courts of Cambodia

On 8 August 2008 the Co-Investigating Judges delivered a Closing Order, pursuant to Rule 67 of the Internal Rules, indicting Kaing Guek Eav alias Duch and sending him forward for trial for Crimes against Humanity and grave breaches of the Geneva Conventions of 12 August 1949 (war crimes) as regards his role in S-21. A redacted version of this Closing Order is available in the three official languages of the ECCC on the internet site www.eccc.gov.kh

²See generally <http://www.sc-sl.org>.

See

http://www.eccc.gov.kh/english/cabinet/press/72/Closing_order_Duch_press_release.pdf

(Nicolas Lange)

European Court of Human Rights

On 30 June 2008, the ECHR dismissed an appeal by a German national, Magnus Gäfgen, who complained that he was threatened with ill-treatment by the police in order to make him confess to the whereabouts of a boy he was suspected to have kidnapped, and that the ensuing trial against him was not fair. On the instructions of the Deputy Chief of Frankfurt Police, one of the police officers responsible for questioning Mr Gäfgen had warned the applicant that he would face considerable suffering if he persisted in refusing to disclose the child's whereabouts as they feared for the boy's life.

In its judgement, the Court underlined the absolute nature of the prohibition of treatment contrary to Article 3, irrespective of the conduct of the person concerned and even if the ill-treatment was to extract information in order to save a person's life. The Court considered that the applicant's treatment had to have caused him considerable mental suffering and would, if carried out, have amounted to torture. Therefore, the applicant had been subjected to treatment during his interrogation which the Court held inhuman, in breach of Article 3.

However, both Frankfurt am Main Regional Court and the Federal Constitutional Court had acknowledged expressly and in an unequivocal manner that the applicant's treatment had violated Article 3. Moreover, redress had been granted to the applicant because the two police officers involved in threatening the applicant had been convicted of coercion and incitement to coercion in the course of their duties and had been punished. Furthermore, the Regional Court had excluded from the criminal proceedings all statements made under threat. The Court was therefore satisfied that the domestic courts had afforded the applicant sufficient redress and concluded that he could no longer claim to be the victim of a violation of Article 3.

Given the particular circumstances of the case, the Court also dismissed a violation of the applicant's defence rights as the Regional Court had informed the applicant at the beginning of his trial of his right to remain silent and that all his earlier statements could not be used as evidence against him. The applicant, however, nevertheless confessed that he had kidnapped and killed the child.

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=&sessionid=13079486&skin=hudoc-en>

(Birgit Kessler)

Another relevant decision is:

- *Medvedyev and others v. France* (10 July 2008), concerning a maritime counter drug operation.

National Developments

Canadian Judgments on Deserters and Khadr files

First, on 15 July 2008, Canada transferred US Army deserter Robin Long back to US custody following the decision *Long v. Canada* by the Federal Court of Canada (<http://decisions.fct-cf.gc.ca>) denying his asylum request. Long was the first of an estimate 200 US military

personnel having abandoned the United States military and fled to Canada. The week before the Court, in the case of *Key v. Canada* (2008 FC 838, <http://decisions.fct-cf.gc.ca/en/2008/2008fc838/2008fc838.html>), permitted Joshua Key, another US soldier, to remain in the country appealing an initial denial of refugee status by naming a number of key factors in determining whether or not the Immigration and Refugee Board of Canada (IRB) should grant an applicant asylum. These factors include the reasons for the objection to deployment, the likely legal consequences of resisting deployment, and the availability of remedies other than Canadian refugee status. However, the court states in the *Long* decision, quoting Article 171 of the UN refugee Agency handbook, that "*not every conviction, genuine thought it may be, will constitute a sufficient reason for claiming refugee status after desertion or draft-evasion*". In his case, Long could not adequately substantiated his risk of persecution in the US. In contrast, the Canada's House of Commons pass a non-binding resolution demanding asylum for deserters. See: <http://jurist.law.pitt.edu/paperchase/2008/07/canada-deports-us-soldier-avoiding-iraq.php>.

Second, on 9 July 2008, lawyers for the Canadian Guantanamo detainee Omar Khadr released some documents indicating that the Canadian government knew about the mistreatment of Khadr during his custody at Guantanamo. The documents were handed over by the government following the ruling of an order by a Canadian Federal Court Judge on 26 June 2008 which is based on the Supreme Court of Canada decision of 23 May 2008 (*Canada (Justice) v. Khadr* – 2008 SCC 28, <http://scc.lexum.umontreal.ca/en/2008/2008scc28/2008scc28.html>; see Newsletter 2008/2). The order by Federal Court Judge Mosley (*Khadr v. The Attorney General of Canada* - 2008 FC 807, <http://cas-ncr-nter03.cas-sati.gc.ca/rss/DES-1-08%20Decision.pdf>), refused a request by several media organizations to publicly disclose all the evidence that will be provided to Khadr's lawyers and confirmed that the files have to be handed over to Khadr and his lawyers helping his defense to prove his mistreatment. Mosley stated: "*Canada cannot now object to the disclosure of this information. The information is relevant to the applicant's complaints of mistreatment while in detention. While it may cause some harm to Canada-US relations, that effect will be minimized by the fact that the use of such interrogation techniques by the US military at Guantánamo is now a matter of public record and debate. In any event, I am satisfied that the public interest in disclosure of this information outweighs the public interest in non-disclosure*". One of the documents reads in part: "*In an effort to make him more amenable and willing to talk, [redacted] has placed Umar on the frequent flyer program: for the three weeks before Mr Gould's visit, Umar has not been permitted more than three hours in any one location. At three hour intervals he is moved to another cell block, thus denying him uninterrupted sleep and a continued change of neighbours. He will soon be placed in isolation for up to three weeks and then he will be interviewed again.*" Earlier this year, in May, Khadr indicted US interrogators of mistreatment, especially threatening him with rape, physically abusing him, and forcing him to swear to false statements. See <http://jurist.law.pitt.edu/paperchase/2008/07/new-documents-show-canada-knew-of-khadr.php> and <http://www.canada.com/reginaleaderpost/news/story.html?id=7cfb8aa4-796a-407c-b121-225c3373dae2>.

(Janina Bollmann)

Czech-US missile defense pact

On 8 July, the US Secretary of State Condoleezza Rice and Czech Minister of Foreign Affairs Karel Schwarzenberg signed an agreement in principle allowing the US to install a ballistic missile radar system in the Czech Republic. This should become the first part of the US planned European defense shield, being positioned on the military base of Brdy, 90 kilometers southwest of Prague. While the details were already elaborated in April, the treaty has now to be approved by the Czech Parliament. A similar treaty intended between the US and Poland has been delayed by disagreements. Russia has immediately objected and threatened that "*if a US strategic anti-missile shield starts to be deployed near our borders, we will be forced*

to react not in a diplomatic fashion but with military-technical means" (http://www.mid.ru/brp_4.nsf/sps/14FC88B0CB5E3568C3257480005DFF8F). See <http://www.state.gov/secretary/rm/2008/07/106758.htm> and <http://jurist.law.pitt.edu/paperchase/2008/07/us-czech-missile-defense-pact-prompts.php>.

(Janina Bollmann)

Equatorial Guinea court jails British ex-officer for coup attempt to 34 years

On 7 July 2008, a court in Equatorial Guinea jailed the British mercenary Simon Mann, a former army special forces officer, for 34 years, four months and three days for his role in a 2004 failed coup plot. Mann was also ordered to pay a fine and compensation to the Equatorial Guinea state totaling around US\$24 million. The Court sentenced him on three different counts: for making attempts against the life of Equatorial Guinea's president, against the government and against the peace and independence of the state. Another defendant, Lebanese businessman Mohamed Salaam, was also sentenced and received a jail term of 18 years, while four Equatorial Guinean nationals were given terms of 6 years each. Another was jailed for one year and one other was acquitted. Mann had served a four-year sentence in Zimbabwe for illegal arms possession after being arrested there in 2004 and before extradited to Equatorial Guinea (see <http://jurist.law.pitt.edu/paperchase/2008/06/equatorial-guinea-begins-trial-of.php>). During the trial, Mann accused the London-based Lebanese millionaire Eli Calil and Mark Thatcher, the son of the former British Prime Minister Margaret Thatcher, of having led the coup and he testified that the governments of Spain and South Africa had given a "green light" to the 2004 conspiracy. All those blamed have denied any role in the conspiracy. Mann's defense team can now either appeal against the sentence to the Supreme Court or directly apply for a pardon to President Obiang. See <http://www.reuters.com/article/worldNews/idUSL0712570820080707?pageNumber=3&virtualBrandChannel=0> and <http://africa.reuters.com/country/GQ/news/usnL07206769.html>.

(Janina Bollmann)

France withdraws Declaration to Rome Statute

On 9 June 2000, France issued an interpretative declaration in which it decided "not accept the jurisdiction of the Court with respect to the category of crimes referred to in article 8 when a crime is alleged to have been committed by its nationals or on its territory", pursuant to article 124 of the Statute. The aforementioned provision limits the effects of such a declaration to a period of 7 years after the entry into force of the Statute. France however decided to withdraw its declaration before that time. As a result, Columbia is the only party to the Statute that still has an active declaration in accordance with article 124 of the Rome Statute.

For the original French declaration, see: <http://treaties.un.org/doc/Treaties/1998/11/19981110%2006-38%20PM/Related%20Documents/CN.404.2000-Eng.pdf>

For the withdrawal of the declaration, see: <http://treaties.un.org/doc/Publication/CN/2008/CN.592.2008-Eng.pdf>

For the Columbian declaration, see: <http://treaties.un.org/doc/Treaties/1998/11/19981110%2006-38%20PM/Related%20Documents/CN.834.2002-Eng.pdf>

(Marco Benatar, Voluntary Collaborator)

Germany convicts Iraqi for al-Qaeda recruitment material distribution

On 20 June 2008, the Higher Regional Court in Celle, Germany, (2 StE 5/07, http://www.oberlandesgericht-celle.niedersachsen.de/master/C47903115_N5573990_L20_D0_14815647.html) jailed an Iraqi man, Ibrahim Rashid, for three years for posting al-Qaeda propaganda online in chat rooms for recruiting for a non-German terrorist organization, presenting a landmark decision concerning the use of the Internet in global terrorism. See <http://www.dw-world.de/dw/article/0,2144,3424897,00.html> and <http://jurist.law.pitt.edu/paperchase/2008/06/germany-convicts-iraqi-for-al-qaeda.php>.

(Janina Bollmann)

German authorities arrested Rwanda war crimes suspect

On 7 July 2008, the German border police arrested Rwandan war crimes suspect Callixte Mbarushimana as he was preparing to travel to Russia. Mbarushimana, a Hutu, was an employee of the UN Development Programme and is suspected by Rwandan authorities of being responsible for the deaths of a number of Tutsis during the genocide. See <http://www.dw-world.de/dw/article/0,2144,3469887,00.html> and <http://jurist.law.pitt.edu/paperchase/2008/07/rwanda-war-crimes-suspect-arrested-in.php>.

(Janina Bollmann)

India army ban on HIV-positive personnel is challenged by soldier

On 27 June 2008, the Indian Supreme court announced that an HIV-positive soldier has challenged his upcoming dismissal from the Indian Army without the mandatory approval of the army's medical board. His advocate Aagney Sail of the Human Rights Law Network submitted to the bench a copy of a March 2008 ruling of the South African High Court, which had struck down a government decision against letting HIV positive personnel serve in its army and pointed out that other nations, including the United States and Mexico, already allow HIV-positive people to serve in their armed forces. See http://www.thaindian.com/newsportal/uncategorized/army-gets-notice-for-sacking-hiv-positive-personnel_10065306.html and <http://jurist.law.pitt.edu/paperchase/2008/06/soldier-challenges-india-army-ban-on.php>.

(Janina Bollmann)

Status of forces agreement Iraq could be delayed past expiration of UN mandate

On 2 July 2008, the Iraqi Foreign Minister Hoshyar Zebari mentioned that a permanent Status of Forces Agreement regarding the role of US troops in Iraq is still blocked by disagreements between the US and Iraq and may cause a delay of the deal past the expiration of the UN mandate for coalition forces in Iraq. While still pushing for immunity from prosecution in Iraqi courts for US troops and the right to hold detainees independent of Iraqi review, the US agreed to eliminate legal immunity for US contractors and are willing to discuss the control for the air space. Iraqi Prime Minister Nouri al-Maliki on the other side declared that some of the provisions the US is seeking, would violate Iraq's sovereignty. If Iraq and the US do not find a solution before their informal deadline of 31 July, both sides favor to adopt an interim deal to keep US troops in the country legally before the UN mandate authorizing the US troop presence expires in December. See: http://www.nytimes.com/2008/07/02/world/middleeast/02iraq.html?_r=2&ref=world&oref=slogin&oref=slogin and <http://www.aswataliraq.info/look/english/article.tpl?ldLanguage=1&ldPublication=4&NrArticle=84327&NrIssue=2&NrSection=1>

(Janina Bollmann)

Multi-National Force-Iraq reports release of thousands of Iraq detainees this year

On 9 July 2008, the Multi-National Force-Iraq (MNF-I) issued on a statement that the US and coalition forces have released more than 9,000 detainees in Iraq already this year, more than were released in all of 2007 and that coalition forces are holding "a steadily decreasing number of individuals determined to be security threat," and have used a "holistic" assessment program to determine the level of danger present by detainees. See http://www.mnf-iraq.com/index.php?option=com_content&task=view&id=21085&Itemid=21 and <http://jurist.law.pitt.edu/paperchase/2008/07/us-reports-release-of-thousands-of-iraq.php>.

(Janina Bollmann)

Kosovo constitution goes into force despite Serbia and Russia protest

On 15 June 2008, Kosovo's new Constitution (<http://www.kushtetutakosoves.info/?cid=2,246went>) entered into force. The constitution was adopted by the Assembly of Kosovo in April and was certified by the European Union as guaranteeing the individual and community rights of all its citizens. In contrast to the US and most European States, Serbia and Russia do not recognize the new State Kosovo. Serbian President Boris Tadic stated that "Serbia sees Kosovo as her southern province and defends her integrity by peaceful means, with diplomacy, and not force" and the Ministry of Foreign Affairs of the Russian Federation declared that the Constitution violates International Law, especially UN Security Council Resolution 1244. See http://news.xinhuanet.com/english/2008-06/15/content_8374613.htm and <http://jurist.law.pitt.edu/paperchase/2008/06/russia-refuses-to-recognize-new-kosovo.php>.

(Janina Bollmann)

Netherlands District Court in The Hague: UN has Immunity in Srebrenica case (10 July 2008)

Russia court rules against investigation of 1940 Poland massacre

On 7 July 2008, A Moscow court rejected an attempt by relatives of Polish victims of the 1940 Katyn massacre to renew investigations into the killings. After blaming the Nazis for the incident about decades, Mikhail Gorbachev admitted in 1990 that Josef Stalin had personally ordered the secret police to carry out the killings of more than 20,000 Polish Army reservists, academics and politicians in the Katyn Forest in present-day Belarus and other locations. The Moscow City Court's Monday ruling upheld an earlier lower court ruling denying the appeal. A lawyer for the family members said they will appeal to the district military court for achieving the reopening of the investigations and the disclosing of the information by the Russian government. See <http://www.reuters.com/article/latestCrisis/idUSL07252897> and <http://jurist.law.pitt.edu/paperchase/2008/07/russia-court-rules-against.php>.

(Janina Bollmann)

Suriname ex-military-dictator goes on trial for 1982 killings

On 4 July 2008, the military trial of former Suriname dictator Desi Bouterse commenced with the testifying of former bodyguard Onno Flohr and Bouterse's ex-secretary Eleonore Geer-Brakke. Bouterse is accused for the "December Murders" at Fort Zeelandia, Paramaribo in 1982. Both witnesses give evidence that Bouterse was present at the killings of 15 political opponents, including lawyers, journalists, professors, military officers and businessmen, who were accused of plotting against the government and that the witness and other members of the firing squad were ordered to fire under the threat of death. In the case of conviction,

Bouterse is expected to be sentenced to 20 years in prison. See: http://afp.google.com/article/ALeqM5ghnYTOkL4kfnAn290t_arDAVGqDQ.

(Janina Bollmann)

Developments in the UK

On 6 July 2008, the UK House of Commons Foreign Affairs Committee stated its concern about what it termed "false US assurances" about rendition flights through the UK Indian Ocean territory of Diego Garcia. The UK Secretary of State for Foreign and Commonwealth Affairs David Miliband has stated that US military planes used for extraordinary rendition flights landed / stop at the military base of Diego Garcia for refueling. His apology followed the admission by the US CIA Director Michael Hayden confirming the flights. See <https://www.cia.gov/news-information/press-releases-statements/past-use-of-diego-garcia.html>.

The Committee said in a new report (<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmfaff/147/14705.htm>) that it would conduct a further investigation of UK supervision of US activities on Diego Garcia. See <http://jurist.law.pitt.edu/paperchase/2008/07/uk-commons-committee-deplores-false-us.php>

On 13 July 2008, London's Woolwich Crown Court found five men involved in an alleged liquid bomb plot guilty of lesser conspiracy charges under the Terrorism Act 2006. See <http://www.cbc.ca/world/story/2008/07/14/airliners-trial.html> and http://www.opsi.gov.uk/acts/acts2006/ukpga_20060011_en_1.

On 10 July 2008, the Ministry of Defense reached a settlement with 10 Iraqi men who claimed they were tortured by British troops in Basra and will pay compensation in the amount of £ 2.83 million. The 9 Iraqi men and the family of Baha Mousa, who died in custody, obtain the money for compensation as well as an apology and an admission of liability, stated a MOD spokesman. The UK Secretary of state for Defense Des Browne admitted that British soldiers have violated human rights, especially the European Convention on Human Rights. After being court-martialed, Corporal Donald Payne, was sentenced to a year in prison for a single charge of inhumane treatment, after being acquitted of manslaughter. Colonel Jorge Mendonca was acquitted of the charge against him, which was neglect of duty. See <http://jurist.law.pitt.edu/paperchase/2008/07/iraq-detainees-to-get-28m-settlement.php>, http://news.bbc.co.uk/nol/ukfs_news/hi/newsid_6360000/newsid_6360800/6360845.stm and http://news.bbc.co.uk/nol/ukfs_news/hi/newsid_6360000/newsid_6360800/6360845.stm.

(Janina Bollmann)

Developments in the US

On 20 June 2008, a panel of the US Court of Appeals for the DC Circuit (Omar Khadr vs. United States of America and United States Court of Military Commission Review No. 07-1405, <http://pacer.cadc.uscourts.gov/common/opinions/200806/07-1405-1122663.pdf>) dismissed a petition of Omar Khadr for reviewing his unlawful combatant classification stating that it has no jurisdiction to hear his appeal. According to the Court, since the Military Commissions Act 2006 the judges are only permitted to review final judgments of military commissions. See <http://jurist.law.pitt.edu/paperchase/2008/06/federal-appeals-court-dismisses-khadr.php>.

On 23 June 2008, a panel of the US Court of Appeals for the DC Circuit (Huzaifa Parhat vs. Robert M. Gates, Secretary of Defense, et al., No. 06-1397, <http://www.scotusblog.com/wp/wp-content/uploads/2008/06/parhat-order-6-20-08.pdf>) ordered the US government to release or transfer the Chinese Uighur Muslim Huzaifa Parhat. The Court ruled that he had been improperly designated as an enemy combatant by a US Combatant Status Review Tribunal. On 1 July 2008, the US Court of Appeal released

declassified portions of the judgment, because the arguments of the government did not establish Perhat's terror connection. See: <http://pacer.cadc.uscourts.gov/common/opinions/200806/06-1397-1124487.pdf>

On 23 June 2008, a US military court in Iraq condemned Alaa "Alex" Mohammed Ali, an Iraqi-Canadian Translator, in connection with the February stabbing to death of a fellow military contractor. He is the first civilian since Vietnam who has been charged and convicted by a military court. This was possible because of the 2006 amendment to the Uniform Code of Military Justice (<http://thomas.loc.gov/cgi-bin/bdquery/z?d109:SN02766;>) which allows military jurisdiction over civilians accompanying US troops in a combat zone. See <http://jurist.law.pitt.edu/paperchase/2008/06/us-military-court-convicts-first.php>.

On 30 June 2008, US Department of Defense prosecutors announced that they had filed charges against Guantanamo Bay detainee Abd al-Rahim al-Nashiri concerning the al Qaeda attack on the USS Cole in 2000. Al-Nashiri is among other offenses charged with terrorism, attempted murder, and providing material support to terrorism. See <http://jurist.law.pitt.edu/paperchase/2008/06/guantanamo-detainee-charged-with-uss.php>

On 16 July 2008, the US Court of Appeals for the Fourth Circuit, sitting *en banc*, issued a per curiam opinion (<http://pacer.ca4.uscourts.gov/opinion.pdf/067427A.P.pdf>) that if the government's allegations against Ali Saleh Kahlah al-Marri are true, the President is empowered by Congress to hold al-Marri in a military prison without charge as an enemy combatant, under the 2001 Authorization for Use of Military Force. The Court overturned the decision of the Fourth Circuit's Court which stated that the military cannot seize and imprison civilians lawfully residing in the United States and detain them as "enemy combatants". However, it found that his due process rights had been violated. Circuit Judge Traxler stated in the opinion of the majority: *"If the allegations against al-Marri are true, al-Marri is a foreign national and member of al Qaeda who entered the United States with a purpose to commit additional hostile and war-like acts within our homeland, and he may therefore be detained as an enemy combatant under the AUMF. Accordingly, I would affirm the district court's order denying al-Marri's motion for summary judgment on the issue of whether the President possesses the legal authority to detain al-Marri as an enemy combatant. However, because al-Marri was present within our borders at the time our intelligence sources identified him as an enemy combatant, he is entitled to contest his designation under the burden-shifting scheme outlined in Hamdi. Under this scheme, the government may demonstrate that the balance of the competing interests weighs on the side of lessened due process protections, which al-Marri and his counsel may contest. But because the district court applied Hamdi's lessened procedures to al-Marri without any additional inquiry or balancing of the respective interests, I would hold that the process al-Marri received was constitutionally insufficient, vacate the district court's order dismissing al-Marri's petition, and remand for further proceedings."* After being arrested at his home in Peoria, Illinois by civilian authorities in 2001, Al-Marri was declared as an enemy combatant by President George W. Bush in 2003 who ordered the attorney general to transfer custody of al-Marri to the defense secretary, claiming inherent authority to hold him indefinitely. See <http://jurist.law.pitt.edu/paperchase/2008/07/federal-appeals-court-upholds.php>.

(Janina Bollmann)

On 29 July 2008, the Senate Foreign Relations Committee favorably reported the following treaties:

- Protocol on Explosive Remnants of War (Protocol V) to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious or To Have Indiscriminate Effects

- Amendment to Article 1 of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious or To Have Indiscriminate Effects
- Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict
- Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III) Additional to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious or To Have Indiscriminate Effects
- Protocol on Blinding Laser Weapons (Protocol IV) Additional to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious or To Have Indiscriminate Effects
- The International Convention for the Suppression of Acts of Nuclear Terrorism
- The Amendment to the Convention on the Physical Protection of Nuclear Material
- The Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
- The Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf

For more information, see: <http://foreign.senate.gov/hearings/2008/hrg080729p.html>

(Marco Benatar)

INTERESTING PUBLICATIONS

Notes (English) :

*The publications marked with * have been offered by their publishers or their authors to the documentation centre of the International Society, where our members can consult them. A separate book review or an announcement 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.*

Notes (français) :

*Les publications marquées d'un * ont été offertes par leurs éditeurs ou leurs auteurs au centre de documentation de la Société internationale où nos membres peuvent les consulter. Une critique de livres ou une annonce paraîtra séparément dans la Revue 2008 de Droit Militaire et de Droit de la Guerre.*

*Les publications marquées d'un ** ont été acquises par le centre de documentation de la Société internationale.*

hb = hardback pb = paperback.

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