Société Internationale de Droit Militaire

et de Droit de la Guerre

International Society for Military Law

and the Law of War

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INTRODUCTION

Dear Reader,

This newsletter draws your attention to two events organised by the Society: A workshop in Brussels and the 8th Seminar for Legal Advisors to the Armed Forces in Riga. Furthermore it covers once again a wide range of legal developments, new legislation and recent jurisprudence. Also a list of interesting recent publications is offered to the reader. We hope that you will enjoy reading this newsletter and that we will see you soon at one of the Society's activities.

Ludwig Van Der Veken, *Secretary General*

NEWS, ANNOUNCEMENTS OF CONFERENCES, SEMINARS, ETC.

The ***8th Seminar for Legal Advisors to the Armed Forces*** will take place in Riga, Latvia, from 25 to 30 May 2010, with the appreciated support of the Latvian Ministry of Defence. The program and registration form have been published on our website. Please note that the number of places per country is limited.

The International Society for Military Law and the Law of War has organised a ***Workshop, in cooperation with NATO Headquarters***. The workshop will be held on 27 October 2009 on the following topic: ***The Pre-emptive and Preventive Use of Force in Response to the Proliferation of Weapons of Mass Destruction***. For more information, see the website of the Society or contact the General Secretariat.

The International Society for Military Law and the Law of War and the Belgian Branch of the International Law Association jointly organized an ***evening lecture in Brussels*** on Wednesday 26 August 2009. The theme of this evening lecture was 'the use of communication and information technologies: an analysis from a jus ad bellum and a jus in bello perspective'. Prof. Dr. Andrei Kozik, First Vice-Rector of the International Institute of Labor and Social Relations in Minsk, served as guest lecturer.

The Program on Humanitarian Policy and Conflict Research (HPCR) at Harvard University has organized an informal brainstorming session among military professionals at the Club Prince Albert in Brussels on 17 July 2009, with the support of the Belgian Ministry of Defence and of the International Society for Military Law and the Law of War. This session build on the results of the brainstorming session chaired by HPCR at the 18th Congress of the International Society for Military Law and the Law of War, held in La Marsa (Tunisia), and focused on the ***need for guidelines on good practices when designing multinational operations***.

The Lieber Society, an interest group of the American Society of International Law, bestows each year, without regard to nationality, a prize for an exceptional writing that enhances understanding of the law of war by a person serving in the regular or reserve armed forces of any nation. The winner will receive a certificate confirming that he or she has won the ***2010 Lieber Society Military Prize***, $500.00, and a one-year membership to the American Society of International Law (ASIL). The judges may also select two additional persons to receive Lieber Society Certificates of Merit and ASIL annual memberships for their papers. Papers for the 2010 competition must be received no later than Friday, 2 January 2010. For more information see the attachments to this newsletter.

(Alfons Vanheusden)

RECENT DEVELOPMENTS, LEGISLATION & JURISPRUDENCE

International Agreements and Documents

Enhanced cooperation between the United States and Russia

On 5 December 2009, the Strategic Arms Reduction Treaty (START) on reducing and limiting strategic offensive arms, will expire. That is why on 1 April 2009 American and Russian negotiators started working together on a new legally binding agreement. On 6 July 2009, it resulted in a Joint Understanding for the START Follow-on Treaty which commits both countries to reduce their strategic warheads and delivery vehicles. The new treaty will include effective verification measures drawn from the experience of the Parties in implementing the START. (See http://www.whitehouse.gov/the_press_office/FACT-SHEET-The-Joint-Understanding-for-the-START-Follow-on-Treaty/).

On 6 July 2009, the White House reported that the US and the Russian Federation confirmed their commitment to strengthen their cooperation to prevent the proliferation of nuclear weapons and stop acts of nuclear terrorism. The Joint Statement stresses the need for continuous upgrading of nuclear security requirements. Commitments regarding high-enriched uranium (HEU) fuel and new types of low-enriched uranium (LEU) fuel have been made by both of the countries in order to improve the level of nuclear security and to combat existing and emerging threats. In sum, both the US and Russia will build upon previous joint efforts, experience and achievements to fulfill their agreement reached in London on 1 April 2009 and to bring into force the bilateral Agreement for Cooperation in the Field of Nuclear Energy. (See http://www.whitehouse.gov/the_press_office/Joint-Statement-by-President-Barack-Obama-of-the-United-States-of-America-and-President-Dmitry-Medvedev-of-the-Russian-Federation-on-Nuclear-Cooperation/).

Also, on 6 July 2009, an agreement, which complements a NATO-Russia arrangement, was concluded, enabling the United States to transport its military personnel and equipment across Russia to support American and Coalition forces in Afghanistan. (See http://www.whitehouse.gov/the_press_office/FACT-SHEET-United-States-Russia-Military-Transit-Agreement/).

(Angélique Rézer)

International(ised) Courts

European Court of Human Rights (ECtHR)

Al-Saadoon and Mufdhi v. United Kingdom

Two Iraqi nationals, Al-Saadoon and Mufdhi, filed a claim against the United Kingdom before the European Court of Human Rights, alleging that their transfer from British to Iraqi authorities and the ongoing trial against them for murder of two British soldiers, were violating their right to life, the prohibition of torture and/or inhuman and degrading treatment, their right to a fair trial and the abolition of the death penalty. They also claimed that their transfer, an act in direct violation of the Court's earlier ruling, violated their right to an effective remedy and their right of individual petition.

On 30 June 2009, the Court first acknowledged that the European Convention on Human Rights was applicable to both of the applicants. Because the applicants were in British custody from 2003 until 2008, and because the British authorities had '*total and exclusive control*' over the detention facilities and the applicants were thus '*within UK's jurisdiction until their physical transfer*', it must be concluded that an examination of merits had to be determined.

Regarding the ill-treatment and/or extra judicial killing, the Court declared the claim inadmissible due to a lack of exhaustion of domestic remedies. See also ASIL's newsletter, 10 July 2009, www.asil.org.

(Angélique Rézer)

Supervision of the execution of the judgments of the ECtHR

An annual report presents the Committee of Ministers' activities in 2008 in the field of the supervision of the execution of the judgments of the ECtHR. It underlines the very close links between good execution, the proper implementation of the European Convention on Human Rights in the Council of Europe's member states and the case-load of the ECtHR.

The execution process and ongoing reform work are described. Appendices present detailed statistical information, both in general and by state. One of the appendices contains the thematic overview of major developments in the execution of pending cases. This report provides a number of recommendations to member states to improve their capacity to implement the judgments of the ECtHR. For more information see http://book.coe.int/sysmodules/RBS_page/admin/redirect.php?id=36&lang=EN&produit_aliasid=2430

(Amandine Materne)

International Criminal Tribunal for Rwanda (ICTR)

On 14 July 2009, Tharcisse Renzaho was given life sentence by the ICTR. The former prefect of Kigali-Ville and Colonel in the Rwandan Armed Forces in 1994, was found guilty of genocide, crimes against humanity and war crimes but acquitted of complicity to commit genocide. The Chamber found that Renzaho supported the killings of Tutsis at roadblocks and also that he supervised a selection process at a refugee site, where about 40 Tutsis were abducted and

killed. While he was Colonel, he furthermore participated in an attack where more than 100 Tutsis were slaughtered and numerous women were raped. The ICTR, declared Mr. Renzaho guilty of rape which followed from the inciting remarks he made. (See http://www.ictr.org/default.htm).

(Angélique Rézer)

International Criminal Tribunal for the Former Yugoslavia (ICTY)

On 21 July 2008, after more than a decade as a fugitive, the former Bosnian Serb leader, Mr. Radovan Karadzic, was finally arrested and transferred to the International Criminal Tribunal for the former Yugoslavia, located in The Hague.

One year later, his case is pending in pre-trial. Since 1995, the initial indictments held against Mr. Karadzic, have been amended three times. Mr. Karadzic is being indicted for genocide, crimes against humanity and violations of the laws or customs of war for actions committed between 1992 and 1995.

For more information, see www.icty.org/x/cases/karadzic/cis/en/cis_karadzic_en.pdf.

On 20 July 2009, a Trial Chamber of the ICTY convicted Milan and Sredoje Lukić, two Bosnian Serb cousins, of war crimes, including burning alive of scores of Muslim women, children and elderly men, an act the ICTY said ranks among '*the worst acts of inhumanity that a person may inflict upon others*'.

Milan Lukić has been found guilty, according to evidence presented to the ICTY, of persecution, murder, extermination, cruel treatment and inhumane acts. For these acts, committed in the eastern Bosnian town of Višegrad during the 1992-1995 conflict, he was sentenced to life imprisonment.
His cousin, Sredoje Lukić, was sentenced to 30 years of prison because the ICTY found him guilty of aiding and abetting the commission of the crime of persecutions, inhumane acts, murder and cruel treatment.

See press release of the ICTY of 20 July 2009; the judgment is available at www.icty.org/x/cases/milan_lukic_sredoje_lukic/tjug/en/090720_judg_summary_en.pdf.

(Angélique Rézer)

On 24 July 2009, the ICTY gave the leader of the Serbian Radical Party a 15-month jail term after finding him guilty of contempt of court. Vojislav Seselj was convicted because of the publication of names of three protected witnesses in his war crimes trial concerning his alleged role in an ethnic cleansing campaign in the Vojvodina region of Serbia between 1991 and 1993. Although Mr. Seselj said he did reveal the witnesses' names to '*unmask a plot in public*' regarding some events in the indictment for his war crimes trial, the ICTY said it was gravely concerned with '*the deliberate way in which the protective measure decisions*' concerning the witnesses had been defied by Mr. Seselj. The ICTY also ordered Mr. Seselj to withdraw the book from his website.

For more details see http://www.un.org/apps/news/story.asp?NewsID=31576&Cr=icty&Cr1

On 23 July 2009, the Appeals Chamber of the ICTY overturned the conviction of Astrit Haraqija, the Kosovo's ex-minister of culture, youth and sports for contempt of court for trying to intimidate a witness in the trial of the former Kosovo Albanian military leader Ramush Haradinaj. On the other hand, the Appeals Chamber upheld the conviction on the same charge of one of his political advisers, Bajrush Morina, who was given three months in jail. The two of them had both appealed their contempt of court convictions. The prosecutors had also appealed, asking for the sentences to be increased. The cause of the reversal of the court conviction is that the ICTY Appeals Chamber found that the Trial Chamber had given too much weight to evidence based on *double or even triple hearsay* when it concluded that Mr. Haraqija had influence over Mr. Morina and had instructed him to commit the crime of contempt. The ICTY rejected Mr. Morina's grounds of appeal. The two men had been on provisional release since earlier this year, having already served the duration of the sentences imposed by the trial chamber. For more details go to UN News Centre http://www.un.org/newsn, or to http://www.un.org/apps/news/story.asp?NewsID=31560&Cr=icty&Cr1

(Amandine Materne)

National Developments

Afghanistan accedes to Additional Protocols I and II to the 1949 Geneva Conventions

On 24 June 2009, the Islamic Republic of Afghanistan acceded to the Protocols additional to the Geneva Conventions, relating to the protection of victims of international armed conflicts (Protocol I) and non-international armed conflicts (Protocol II). In particular, the entry into force of Additional Protocol II in Afghanistan will strengthen rules that until now were based on customary rules of international law, not codified in any treaty applicable to the Afghan conflict. Afghanistan's accession brings the number of states party to Additional Protocol I to 169 and the number of states party to Additional Protocol II to 165. For more information, please visit : http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/afganistan-news-240609?opendocument and http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/views-from-field-report-240609/$File/Our-World-Views-from-Afghanistan-I-ICRC.pdf.

(Amandine Materne)

Belgian Senate adopts draft bill authorizing intrusive methods of data collection for intelligence services

On 16 July 2009, the Belgian Senate adopted a draft bill concerning the methods of data collection by the military and civilian intelligence and security services of Belgium, including wiretapping. The aim is to provide the intelligence services a legal basis to use intrusive methods to gather information in certain cases, particularly in the context of the fight against terrorism. In accordance with the applicable legislative process, the draft bill is now being considered by the Chamber of Representatives. For more information, please visit: http://www.liguedh.be/index.php?option=com_content&view=article&id=366:projet-de-loi-relatif-aux-services-de-renseignement-la-belgique-un-pays-democratique-&catid=105:communiques-de-presse-2007&Itemid=272, and http://www.lesoir.be/actualite/belgique/2009-07-08/services-renseignements-methodes-recueil-legalisees-716764.shtml and http://www.lachambre.be/FLWB/pdf/52/2128/52K2128001.pdf.

(Amandine Materne)

UN team looking into alleged sexual misconduct by blue helmets in DRC

A fact-finding team has been dispatched by the United Nations peacekeeping mission in the Democratic Republic of the Congo (DRC) to investigate rumours of sexual misconduct surrounding some blue helmets stationed in the country's far east. General Babacar Gaye, Force Commander of the MONUC voiced hope that the investigation will shed light on persistent allegations of sexual exploitation and abuse leveled against peacekeepers. He said he is concerned that other cases might have gone undetected, especially in more remote locations. The fact-finding mission will visit operating bases of MONUC and camps housing tens of thousands of internally displaced persons (IDPs). For more details go to http://www.un.org/apps/news/story.asp?NewsID=31574&Cr=monuc&Cr1=

(Amandine Materne)

Developments in Germany

On 30 June, the Federal Constitutional Court ruled that the European Union's Lisbon reform treaty was compatible with the German constitution, the Basic Law, but demanded changes to domestic legislation before the treaty could be formally ratified. According to the Court, the German parliament's involvement in European lawmaking procedures needed to be strengthened before the ratification process could continue.

The Court's reasoning was as follows: the extent of the Union's freedom of action has steadily and considerably increased, not least by the Treaty of Lisbon, so that in some fields of policy, the European Union has taken on a form that corresponds to that of a federal state. In contrast, the internal decision-making and appointment procedures remain predominantly committed to the pattern of an international organization. Accordingly, the peoples of the European Union, which are constituted in their Member States, are the decisive holders of public authority, including Union authority. Thus, the primary responsibility for integration remains in the hands of the national constitutional bodies which act on behalf of the peoples. Given the progressing integration, fields of action which are essential to the development of the Member States' democratic opinion-formation have to be retained. In particular, the responsibility for integration exercised by the state bodies of representation of the peoples has to be guaranteed.

With respect to Germany, the Court held that the Basic Law favors European integration. However, the authorization to transfer sovereign powers to the European Union is limited by the so-called eternity guarantee, a constitutional norm that makes changes to fundamental principles of the constitution inadmissible even for the constitution-amending legislature. This is why the principle of conferral and the constitutional identity has to be respected. Also the ability of the Federal Republic of Germany to politically and socially shape the living conditions on its own responsibility had to be retained. This especially concerns areas of particular importance for democracy, where a transfer of powers is excluded or requires a narrow interpretation, e.g. the administration of criminal law or the monopoly on the use of force. Consequently, the transfer of the competence to decide on its own competence would also be prohibited.

Regarding its own role, the Court considered its task to review whether legal instruments of the European institutions and bodies maintained within the boundaries of the sovereign powers accorded to them by way of conferred power (*ultra vires* review) as well as whether the inviolable core content of the constitutional identity of the Basic Law was respected (identity review)

(http://www.bundesverfassungsgericht.de/entscheidungen/es20090630_2bve000208en.html (decision), http://www.bundesverfassungsgericht.de/en/press/bvg09-072en.html (press release); (both in English)).

On 8 September, the German parliament voted the required law (for more information: http://www.bundestag.de/dokumente/textarchiv/2009/26961025_kw37_begleitgesetz/index.html). This still has to pass the Bundesrat, the chamber of the Länder, which is expected soon. After that, the way is open for Germany's ratification of the Lisbon treaty.

On 22 July, the Constitutional Court dismissed a case referred to it by the administrative court of Cologne, claiming that the current practice of conscription violates the constitutional principle of equality. The Court considered that the submitting court had not sufficiently substantiated its request. (Full text in German: http://www.bundesverfassungsgericht.de/entscheidungen/lk20090722_2bvl000309.html; press release in German: http://www.bundesverfassungsgericht.de/pressemitteilungen/bvg09-088.html)

(Birgit Kessler)

Goldstone report on the Gaza conflict

Following a three-month investigation, the United Nations fact-finding mission tasked by the Human Rights Council 'to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after', released a report on 15 September 2009(575 pages). The mission, headed by Justice Goldstone concluded that serious violations of international human rights and humanitarian law were committed by Israel in the context of its military operations. The mission also found that Palestinian armed groups had committed war crimes, as well as possibly crimes against humanity. The report recommends that the Security Council require Israel and the authorities in Gaza to report to it, within six months, on investigations and prosecutions it should carry out with regard to the violations identified by the mission. It also recommends that the Security Council set up a body of independent experts to report to it on the progress of the Israeli and Palestinian investigations and prosecutions. If the experts' reports do not indicate within six months that independent proceedings are taking place, the mission says the Security Council should refer the situation in Gaza to the Prosecutor of the International Criminal Court. See UN press releases of 15 and 29 September 2009.

(Alfons Vanheusden)

NATO and Iraq to sign a legal agreement

On 26 July 2009, the Minister of Defence of the Republic of Iraq, Mr. Abdul Qader Mohammad Jassim Al-Mafrji, and the NATO Deputy Secretary General, Ambassador Claudio Bisogniero, have signed an Agreement regarding the training of Iraqi Security Forces. The Agreement will provide the legal basis for NATO to continue with its mission to assist the Government of the Republic of Iraq in developing further the capabilities of the Iraqi Security Forces. See also http://www.nato.int/cps/en/SID-96E88EDE-C669C9DE/natolive/news_56646.htm

(Amandine Materne)

Supreme Court of the Netherlands delivers its judgment in the Van Anraat case

On 30 June 2009 the Supreme Court of the Netherlands delivered its judgment in the case of Frans van Anraat. Van Anraat was accused of aiding and abetting ('*medeplegen*') violations of the laws and customs of war, as criminalized in Article 8 of the Wartime Offences Act (*Wet Oorlogsstrafrecht*) of 1952. He supplied the regime of Saddam Hussein with the chemical thiodiglycol (TDG), which was used to produce mustard gas that was employed in the attacks on Kurdish villages in Iraq and villages in Iran in 1987-1988.

In 2007, van Anraat was convicted to 17 years imprisonment by the Court of Appeals in The Hague. He appealed his conviction to the Supreme Court on several grounds. One of these grounds was that Article 8 of the Wartime Offences Act, which provides that he who violates the laws and customs of war is criminally liable, should not be applied because it violates Article 7 of the European Convention of Human Rights (ECRM). This article requires *inter alia* that a criminal offence be sufficiently specific. The Supreme Court rejected this, holding that Article 8 WOS is, *inter alia* in the light of the nature of the grave crimes concerned which are based on a common international sense of justice, sufficiently specific.

Another ground on which van Anraat appealed his conviction was that the Court of Appeals had not motivated the submission that the crimes concerned were of an international customary law character. This was rejected on the basis that in Dutch criminal law 'facts or circumstances of general knowledge' do not require proof. The Supreme Court thus suggested that it is so obvious that the crimes concerned are of a customary nature that this can be considered a fact or circumstances of general knowledge.

Other grounds of appeal put forward by van Anraat were also rejected by the Supreme Court. The Court did however consider that in this case the requirement of a hearing within a reasonable time in Article 6 ECRM had been violated, because its judgment came a full sixteen months after the appeal was lodged. This led it to decrease the sentence imposed to sixteen years and a half.

The Supreme Court also considered an appeal by interested parties against the declaration of non-admissibility by the Court of Appeals of their claims for compensation. Dutch criminal law allows an injured party to interject himself in criminal proceedings with a view to obtaining compensation. The possibility to do so was expanded in 1995. In this case however, the law in force before that date was applicable. The Court of Appeals considered that this law, although not expressly mentioning this possibility, allowed it to declare the claim inadmissible because of the complicated legal questions it entailed. This reasoning was upheld by the Supreme Court.

(Marten Zwanenburg)

Report on the Truth and Reconciliation Commission of Liberia

For more than 24 years, Liberia was a restless country, confronted with many human rights violations. The Truth and Reconciliation Commission was the result of a peace conference that took place in Ghana in 2003. Not only did the parties sign a Comprehensive Peace Agreement, but they also decided to establish a Commission '*to foster the truth, justice, and reconciliation by identifying the root cause of the conflict, and determining those who are responsible for committing domestic and international crimes against the Liberian population*'.

On 1 July 2009, the Commission issued its final report outlining its conclusions and recommendations on the human rights violations. It includes issues such as *'reparations, amnesty, prosecution in a specialized Liberian criminal tribunal, public sanctions and a palava hut peace building mechanism to foster dialogue and rebuild broken relationships'*. See ASIL's newsletter, 10 July 2009, www.asil.org.

(Angélique Rézer)

UN official welcomes action plan by Philippine Rebel Group to stop fielding child soldiers

On 31 July 2009, the Secretary-General's Special Representative for Children and Armed Conflict, Radhika Coomaraswamy, welcomed news that the MILF, the Islamic rebel group fighting Government forces in the Philippines, has signed an action plan to prevent the continued recruitment of child soldiers.

This action plan sets out concrete, time-bound steps to prevent the recruitment and use of child soldiers and to release any children found among MILF forces. It also requires that monitoring teams have unimpeded access to the children and that former child soldiers are reintegrated into civilian life.

MILF agreed to the action plan, which conforms with the monitoring and reporting mechanism established as a result of a Security Council resolution from 2005 on the issue. The plan was developed in collaboration with the United Nations Children's Fund and the UN country team in the Philippines.

For more details see
http://www.un.org/apps/news/story.asp?NewsID=31643&Cr=children&Cr1=armed+conflict

http://www.unhcr.org/refworld/publisher,UNPRESS,,PHL,496323cac,0.html

(Amandine Materne)

Spain no longer 'the policeman of the world'

It was reported that Spain no longer has 'universal jurisdiction' to prosecute war crimes, crimes against humanity like torture and terrorism, and genocide.

The Spanish Chamber of Representatives changed the law by which Spanish Courts could prosecute the perpetrators of serious crimes without needing any link with Spain. The same was true in Belgium under its law of 16 June 1993 regarding the punishment of serious violations of international humanitarian law.

The Senate has passed the bill in order to amend the law. From now on, Spain will only prosecute serious crimes if Spanish victims are involved or if the presumed perpetrator is to be found on Spanish territory.

For the cases that are still pending, the Spanish National Court has decided to apply the non-retroactivity principle by which the pending cases concerning e.g. the Israeli bombing in Gaza, the accusations of torture in Guantanamo, or the alleged crimes of the Chinese government in Tibet, will be continued. (See www.destandaard.be, *"Spanje na wetswijziging niet langer 'de*

politieman van de wereld'", 26 June 2009; See also http://jurist.law.pitt.edu/paperchase/2009/10/spain-parliament-passes-law-limiting.php).

(Angélique Rézer)

UK Armed Forces Act comes into force

The Armed Forces Act 2006, together with a number of subordinate orders and regulations, comes fully into force on 31st October 2009. Under the previous legislation the Army, Royal Navy and RAF each had its own legislation and system of discipline. These were broadly similar but contained numerous differences of detail. This was seen as impeding fairness and efficiency, especially in combined units and commands. The new Act creates a single system of law applicable to all members of the Armed Forces.

The broad structures of discipline remain the same. They include a summary jurisdiction for commanding officers over a very limited number of criminal and disciplinary offences, with a power to award up to 90 days of "detention" (a form of military confinement with compulsory retraining). They also include a system of courts-martial, based as before on a civilian judge (who gives directions on law, evidence and procedure) and a panel of military members. The military members decide on guilt or innocence and (with the judge) decide on the sentence for a person convicted. The main changes relate to the prosecution of offences. Under the old legislation, the decisions on whether to charge and whether to refer a case for possible court-martial were made by the commanding officer. Under the new Act the Service Police will, where there is evidence of a wide range of more serious criminal and disciplinary offences, refer the case directly to the independent Director of Service Prosecutions. The Director will decide in those cases whether to prosecute and what the charge will be.

In addition to changes to provide consistency across the Services, the new Act extensively modernises nearly all areas of domestic military law, including the definition of disciplinary offences, powers of sentencing and the limited jurisdiction which Service courts have outside the United Kingdom over certain civilians (such as dependants and contractors) when they form part of the military community.

(Humphrey Morrison)

U.S. Developments

US tightens policy in Afghanistan

The US tightens its policy in Afghanistan by revising ISAF's tactical directive and more specifically by restricting the use of airstrikes. Those measures aim at avoiding and reducing civilian casualties during operations.

The main objective of the revised Tactical Directive released on 6 July 2009, is '*to minimize the risk to civilian population as a result of the use of force*'. (See http://www.nato.int/isaf/docu/pressreleases/2009/07/pr090706-tactical-directive.html).
The Tactical Directive is '*a guidance and intent for the employment of force in support of ISAF operations and updates the previous version issued by the previous commander [Gen. David D. McKiernan], in October 2008*'. (See also D. Filkins, "*US Tightens Airstrike Policy in Afghanistan*", *New York Times,* 22 June 2009).

The new guidelines of the Tactical Directive were the direct result of a deadly episode in May, in the Afghan village of Granai, where American airstrikes killed dozens of civilians. An investigation of this incident, which was balanced and thorough according to a Pentagon Report, ran by the Afghan Independent Human Rights Commission, has demonstrated that the American airstrike was disproportionate. The Commission also said to be pleased with the new guidelines. (See D. Filkins, "*US Tightens Airstrike Policy in Afghanistan*", *New York Times,* 22 June 2009).

A UN report found that the number of Afghan civilians killed in 2008 was 40 percent higher than in 2007. (See D. Filkins, "*US Tightens Airstrike Policy in Afghanistan*", *New York Times,* 22 June 2009). Still, ISAF's priority is the protection of Afghan civilians. This has again been confirmed and acknowledged in the Tactical Directive which also mentions the importance of respecting the Afghan culture. (The releasable portions of the Tactical Directive are available at http://www.nato.int/isaf/docu/pressreleases/2009/07/pr090706-tactical-directive.html).

Noting the 'appalling levels of human suffering' in armed conflicts, the UN Secretary-General Ban Ki-moon, already on 17 June 2009, called, in general, for more robust measures to protect civilians caught in the middle of armed conflict. In his latest report on the protection of civilians in armed conflict (see http://www.un.org/Docs/journal/asp/ws.asp?m=s/2009/277">report), he acknowledged the difficulties for military forces to identify the enemy because of their fast changing nature. Still, according to Mr. Ban Ki-moon, 5 challenges must be faced regarding the protection of civilians in armed conflict: enhancing compliance with international law; enhancing compliance by non-State armed groups; enhancing protection through more effective and better resourced UN peacekeeping and other relevant missions; enhancing humanitarian access; and enhancing accountability for violations (see http://www.un.org/Docs/journal/asp/ws.asp?m=s/2009/277">report).

(Angélique Rézer)

New approach of the US administration towards North Korea based on UNSC Resolution

From now on, the Obama administration will order the Navy to hail and request permission to inspect North Korean ships at sea, suspected of carrying arms or nuclear technology. But no military action will be provoked by boarding them.

This fundamentally different approach than that of previous administrations is due to the realization that North Korea has no intention at all to give up its nuclear weapons nor to bow to the demands of the United States, its allies or the United Nations.

The new efforts to confront North Korean ships are part of what is described as 'vigorous enforcement' of the United Nations Security Council Resolution approved on 12 June 2009.
(See D.E. Sanger, "*U.S. to confront, not board, North Korean ships*", *New York Times*, 16 June 2009.)

(Angélique Rézer)

Judge orders Guantánamo detainee to be freed

On 30 July 2009, a federal District Court in Washington ordered that one of the youngest detainees at Guantánamo Bay be released by late August in a case that drew wide attention

because of rulings that he had been tortured by Afghan officials and abused in American custody. The judge Huvelle said that '*enough has been imposed on this young man to date*'.

Despite this decision, Justice Department officials said they were studying whether to file civilian criminal charges against Mr. Jawad. If they do, officials say, he could be transferred to the United States to face charges, instead of being sent to Afghanistan to be released to his mother.

Mohammed Jawad has long faced American charges that, as a teenager, he threw a hand grenade in Kabul in 2002 that injured two American servicemen and their Afghan interpreter. His age is unknown, but his lawyers say he was 14 or 15 at the time of the grenade attack.

Military prosecutors have been pursuing war crimes charges against Mr. Jawad, but their case foundered after a military judge ruled last year that it was largely based on confessions Mr. Jawad gave after being tortured. Justice Department lawyers told Judge Huvelle they would no longer use those statements. But they said they had additional evidence, including witnesses to the attack. Judge Huvelle criticized the government for what she described as inattention to the case and a 'continuing pattern' of delay both by the Bush and Obama administrations. She said any prosecution would face difficulties, including what she said was a possible denial of Mr. Jawad's right to a speedy trial and evidence that his treatment at Guantánamo was harsher than that which any juvenile defendant would face in the United States.

For further information, please visit:
http://www.newsdaily.com/stories/tre56s7h1-us-guantanamo-jawad/,
http://www.washingtonpost.com/wp-dyn/content/article/2009/01/14/AR2009011402511.html
and http://www.nytimes.com/2009/07/31/us/31gitmo.html

(Amandine Materne)

The private contractors in Afghanistan are a source of concern

A group of United Nations independent experts on mercenaries voiced concern over the limited scrutiny of private security contractors by the United States Government, calling on greater transparency to prevent impunity for human rights violations. The Group underscored that the State has the primary responsibility of ensuring that contractors respect human rights and are prosecuted in the event of violations. Furthermore, the experts noted that there was very little information accessible to the public on the scope and type of contracts. The intention of the US to increase the number of contractors is also a source of concern since it may further dilute the distinction between military and civilian personnel, an obligation under international law. The Group is also concerned over the US Administration's recent objection to a prohibition in next year's defence funding bill of the use of contractors in interrogating people detained during or after hostilities. Furthermore, the Group underscored the need for a global oversight and monitoring treaty to regulate the use of private contractors for security functions. For more details go to:
http://www.un.org/apps/news/story.asp?NewsID=31667&Cr=human+rights&Cr1=experts and
http://www.washingtonpost.com/wp-dyn/content/article/2009/07/25/AR2009072501738.html

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