



NEWSLETTER 2009-4
October/November/December 2009

INTRODUCTION

Dear members and persons interested in our activities,

2009 has been a memorable year for the Society. Having read and heard comments from many members, I am confident to state that our 18th Congress in Tunis and our first workshop organized with NATO Headquarters, along with the other activities and publications of the Society, marked a year full of valuable service to our members.

2010 promises to be a great opportunity to continue this path of added value. A first proof is undoubtedly the overwhelming number and speed with which strong applications from all over the world to attend our 8th Seminar for Legal Advisors to the Armed Forces (Riga) were sent to the General Secretariat. We thank you for your continued participation in and support for our growing Society. Our members as actually involved stakeholders indeed push the Society to ever higher ambitions in studying, promoting and disseminating the law.

Allow me to wish you and your family a Happy New Year!

Ludwig Van Der Veken
Secretary General

NEWS, ANNOUNCEMENTS OF CONFERENCES, SEMINARS, ETC.

◆The Society's **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 central theme of the seminar is "Commanders and Legal Advisors in International Operations". Participants in the seminar will discuss responsibilities of commanders and legal advisors in multinational/coalition operations; prosecution and punishment of crimes committed by military personnel; roles and responsibilities of non governmental organisations; roles and responsibilities of private security companies in international armed conflict; cyber warfare; direct participation in hostilities; maritime counter-piracy operations; and air targeting issues. For more information, please visit the Society's website.

◆The Belgian Group of the Society will organize a **Conference on Topical Issues pertaining to Means and Methods of Warfare**. The conference will be held in Brussels on 22 February 2010. For more information, please contact the Society's General Secretariat.

◆The International Society for Military Law and the Law of War in cooperation with NATO Headquarters organised and held a successful **Workshop on the Pre-emptive and Preventive Use of Force in Response to the Proliferation of Weapons of Mass Destruction** at the Royal Military Academy on 27 October 2009. This event has been successful in contributing to the understanding of the legal and policy framework of the challenges that lie ahead for the

international community. A common understanding of the legal and policy framework is indeed crucial for the international community to respond effectively to the proliferation of weapons of mass destruction. For more information, see the website of the Society. The report of the workshop will soon be published on the website.

◆The Society's Managing Board was convened in Brussels on 26 October 2009. The next meeting of the Managing Board will be held on 22 January 2010, also in Brussels.

◆The call for papers for the 4th Biennial Conference of the European Society of International Law is available on the conference website www.esil.law.cam.ac.uk. Full details on how to submit an abstract as well as a provisional programme are also available online. The **4th Biennial Conference of the European Society of International Law** will take place in Cambridge, England on 2-4 September 2010, with the overarching theme "International Law 1989-2010: A Performance Appraisal". The conference will be hosted by the Lauterpacht Centre for International Law. The deadline for submission of abstracts is 22 January 2010.

◆The European Science Foundation (ESF), in partnership with LFIU is organising a **Conference on the Responsibility to Protect: From Principle to Practice**. The conference will take place at the Scandic Hotel Linköping Väst, Linköping, Sweden, from 8-12 June 2010. Prof. Andre Nollkaemper from the Amsterdam Center for International Law at the University of Amsterdam will be chairing the conference. The closing date for registrations is 8 March 2010. This conference is part of the [2010 ESF Research Conferences Programme](http://www.esf.org/conferences/10319) and is accessible on-line from www.esf.org/conferences/10319. For more information, see attached flyer or contact Mrs. Aurélie Sissler by phone (+33 (0)388 76 21 48) or e-mail (asissler@esf.org).

◆The NATO School in co-operation with the International Institute of Higher Studies in Criminal Sciences of Syracuse - Italy held its **2009 Shari'a Law and Military Operations Seminar**, 2 – 6 November 2009 at the NATO School, Oberammergau, Germany. The seminar was organized because of its immediate importance to NATO's ongoing missions: International Security Assistance Force in Afghanistan (ISAF), Kosovo Force (KFOR), the support to African Union mission in Somalia (NSM Somalia) and for the African Standby Force, NATO Training Mission in Iraq (NTM-I); and NATO's numerous supporting relationships with Mediterranean Dialogue countries (Algeria, Egypt, Jordan, Mauretania, Morocco and Tunisia), Istanbul Cooperation Initiative countries (Bahrain, Kuwait, UAE, Qatar) and other countries such as Pakistan where Shari'a Law applies. The goal of the seminar was to provide instruction to military officers, legal advisors, operational planners, political and policy advisors by internationally pre-eminent scholars on Shari'a. The seminar offered an introduction to Shari'a Law, specifically discussing Shari'a and law of armed conflict, human rights, criminal justice, terrorism, and Jihad. For more information about the NATO School and Oberammergau visit <http://www.natoschool.nato.int>.

◆The NATO School organized its **2009 Anti-piracy Workshop**, 20 – 22 October 2009 at the NATO School, Oberammergau, Germany. The Workshop aimed at providing a holistic overview of the topic of piracy from the historical, commercial (Lloyds of London, Oil Companies International Maritime Forum), and NATO's point of view. Further, the workshop outlined the legal framework for anti-piracy operations and especially the legal problems related to detention, extradition and prosecution of suspected pirates. Lessons learned from past and current NATO anti-piracy operations as well as the future maritime security concept were presented. The workshop also dealt with the topic of NATO-EU cooperation in anti-piracy activities. For more information about the NATO School and Oberammergau visit <http://www.natoschool.nato.int>.

RECENT DEVELOPMENTS, LEGISLATION & JURISPRUDENCE

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

Note: Unless quotes are taken from authentic documents in the same language, they are not authentic.

International Agreements and Documents

International prosecutors call for Convention on Crimes against Humanity

Prosecutors from the ICTR, the ICTY, the Special Court of Sierra Leone (SCSL), the Extraordinary Chambers in the Courts of Cambodia (ECCC), the ICC, and the Special Tribunal for Lebanon (STL) on 16 November 2009 called on member states to seriously consider the adoption of a Convention on the Suppression and Punishment of Crimes against Humanity. The statement came at the end of a three-day colloquium, which was held in Rwanda and hosted by the ICTR. For more details, visit <http://jurist.law.pitt.edu/paperchase/2009/11/international-prosecutors-call-for.php>.

(Moses Sande)

International Organizations

UN Security Council

Security Council affirms commitment to world free of nuclear weapons

On 24 September 2009 the Security Council affirmed its commitment to the goal of a world free of nuclear weapons and established a broad framework for reducing global nuclear dangers. The meeting was held at the level of heads of State and government and chaired by US President Barack Obama. The meeting came ahead of the top-level global nuclear security summit to be convened by President Obama for April 2010 and the Nuclear Non-Proliferation Treaty Review Conference set for May 2010. The adopted Resolution 1887 voices grave concern about the threat of nuclear terrorism and the need for all States to take effective measures to prevent nuclear material and technical assistance becoming available to terrorists. The resolution calls on countries to accede to the Nuclear Non-Proliferation Treaty as non-nuclear weapons States and creates additional deterrence for withdrawal from the treaty. The resolution also calls on all States to refrain from conducting nuclear test explosions and to sign and ratify the Comprehensive Nuclear-Test-Ban Treaty. In addition and while affirming the right of nations to peaceful uses of nuclear energy, the resolution calls for stronger safeguards to reduce the likelihood that peaceful nuclear programmes can be diverted to a weapons programme, as well as stricter national export controls on sensitive nuclear materials. For more details go to <http://www.un.org/apps/news/story.asp?NewsID=32223&Cr=disarmament&Cr1;> [http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/523/74/PDF/N0952374.pdf?OpenElement;](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/523/74/PDF/N0952374.pdf?OpenElement) [http://www.un.org/apps/sg/sgstats.asp?nid=4098;](http://www.un.org/apps/sg/sgstats.asp?nid=4098) [http://www.iaea.org/NewsCenter/News/2009/unsctmeeting.html;](http://www.iaea.org/NewsCenter/News/2009/unsctmeeting.html) [http://www.ctbto.org/;](http://www.ctbto.org/) and <http://www.un.org/events/npt2005/npttreaty.html>.

Security Council extends the Mission of the International Security Assistance Force (ISAF) in Afghanistan

On 8 October 2009, the Security Council passed Resolution 1890, unanimously extending the mandate of the NATO-led International Security Assistance Force (ISAF) in Afghanistan by twelve months. The resolution *inter alia* expresses its serious concern with the high number of civilian casualties, and calls for compliance with international humanitarian and human rights law and for all appropriate measures to be taken to ensure the protection of civilians. It also recognizes additional efforts taken by ISAF and other international forces to minimize the risk of civilian casualties, and welcomes their intention to undertake continued enhanced efforts in this regard including the increased focus on protecting the Afghan population as a central element of the mission, and noting the importance of conducting continuous reviews of tactics and procedures and after-action reviews and investigations in cooperation with the Afghan Government in cases where civilian casualties have occurred and when the Afghan Government finds these joint investigations appropriate. For more details go to <http://www.un.org/News/Press/docs/2009/sc9762.doc.htm>.

Security Council lengthens mandate of experts monitoring Darfur sanctions

On 13 October 2009 the Security Council voted unanimously to extend the mandate of the panel of experts established to monitor the Darfur arms embargo. The adopted Resolution 1891 allows the panel to continue its work through 15 October 2010. For more information go to <http://www.un.org/News/Press/docs//20.09/sc9765.doc.htm>.

Security Council urges States to help Iran in bringing terror bombers to justice

On 20 October 2009 the Security Council condemned in the strongest terms the terrorist attacks in Iran which killed 57 people and injured 150 others on 18 October 2009 on a meeting of the Revolutionary Guard in Pishin in the Sistan-Baluchistan province of Iran, which borders Afghanistan and Pakistan. The Security Council called on all States to cooperate actively with the Iranian authorities in bringing the perpetrators to justice. The Security Council reaffirmed the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts. See also <http://www0.un.org/apps/news/printnewsAr.asp?nid=32639>.

Côte d'Ivoire: Security Council extends sanctions for another year

On 29 October 2009 the Security Council extended the sanctions imposed on Côte d'Ivoire. In a unanimously adopted resolution, the Security Council voted to maintain for another year an arms embargo, restrictions for certain individuals on travel and financial movements, and the ban on any State importing rough diamonds from Côte d'Ivoire. For more information see <http://www.un.org/News/Press/docs/2008/sc9486.doc.htm> and <http://www.un.org/Depts/dpko/missions/unoci/>.

Earlier in the month, the Group of Experts set up in 2005 to monitor the sanctions reported that despite the arms embargo, northern and southern Ivorian parties are rearming or re-equipping with related materiel. The Group identified seven separate cases in which the Government and the Forces Nouvelles acquired arms and related materiel in breach of the sanctions regime. For more details visit <http://www.un.org/apps/news/story.asp?NewsID=32732&Cr=ivoire&Cr1>.

(Alfons Vanheusden)

Security Council amends sanction regime against Al-Qaida

Acting under Chapter VII of the UN Charter, the Security Council of the United Nations created the « Office of the Ombudsperson » in Resolution S/RES/1904 (2009) on 17 December 2009. This person of "high moral character, impartiality and integrity with high qualifications

and experience in relevant fields" will be responsible for ensuring the rights of people, companies and organizations targeted by the UN sanctions for their ties to Al-Qaida and the Taliban. This important decision of the UN Security Council allows for a delisting mechanism.

For years now, questions have been raised about the fairness of the black list and the respect for the fundamental rights of those who find themselves on it. Especially the lack of knowledge of his/her inclusion on the list and further the non-existence of a procedure to fight this decision when they are unfairly targeted were a big issue.

The Security Council first imposed sanctions against the Taliban in 1999. The sanctions were later enlarged to include al-Qaida too. Today the black list contains around 500 names, although 30 of them are believed to be dead. Under the new measures adopted by the Security Council Resolution the sanctions committee will have more time to verify whether a proposed name merits inclusion. Moreover, the inclusion of every person on the list today will be reviewed.

The creation of the "Office of the Ombudsperson" fits in the current strategy to strengthen the sanctions regime, but also to make it more transparent and to address its shortcomings.

Sources :

UN News Centre <http://www.un.org/apps/news/story.asp?Cr=qaida&Cr1=&NewsID=33288>; www.indianexpress.com ; and www.cbc.ca.

(Rosalie Daneels)

UN releases peacekeeper abuse data

The UN has released details on the number of UN peacekeepers punished for committing sexual abuses while on UN missions. At least 50 peacekeepers have been punished by national authorities in the last three years, including 33 in 2009. The punishments ranged from reduction in military rank to eight months imprisonment. No data on the nationalities or identities of the peacekeepers were revealed. In addition, disciplinary action was taken, over the past three years, against 20 military personnel for cases involving other forms of misconduct, such as negligent loss of firearms, traffic-related violations and fraud or theft. The figures show the UN has referred to national authorities some 450 instances of misconduct — sexual and otherwise — since 2007 but has received responses in only 29 of these cases. The data, provided by the Department of Field Support (DFS) through a new section of the UN's Conduct and Discipline Unit website, will be accessible at <http://cdu.unlb.org>, under the heading, "statistics". See UN press releases of 5 November and 24 December 2009 and <http://www.cbc.ca/world/story/2009/11/05/un-sexual-abuse-peacekeepers.html>.

(Frederik Naert, KU Leuven)

International(ised) Courts

International Court of Justice (ICJ)

The International Court of Justice (ICJ) commenced public hearings on the question of the *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo* (request for advisory opinion by Serbia) from Tuesday 1 December to Friday 11 December 2009, at the Peace Palace in The Hague, seat of the Court. Thirty States and the authors of the unilateral declaration of independence participated in the oral proceedings before the Court. These States are, in alphabetical order: Albania, Argentina, Austria, Azerbaijan, Bahrain, Belarus, Bolivia, Brazil, Bulgaria, Burundi, China, Croatia, Cyprus, Denmark, Finland, France, Germany, Jordan, the Lao People's Democratic Republic, the Netherlands, Norway, Romania, the Russian Federation, Saudi Arabia, Serbia, Spain, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Venezuela and Viet Nam. For further details visit <http://www.icj-cij.org/homepage/index.php?lang=en>.

International Criminal Court (ICC)

On 1 October 2009 the International Criminal Court held a symbolic ceremony at the seat of the Court in The Hague, to welcome the Czech Republic as the newest State Party to the Rome Statute. The Czech Republic deposited its instrument of ratification to the Rome Statute on 21 July 2009, and the Statute entered into force for the Czech Republic on 1 October, 2009, bringing the total number of States Parties to the Rome Statute to 110. For details visit <http://www.icc-cpi.int/Menus/ICC/Press+and+Media/Press+Releases/>.

On 25 September 2009, the ICC Appeals Chamber dismissed the appeal of Germain Katanga against Trial Chamber II's decision of 12 June 2009 which declared his case admissible before the ICC. Mr. Katanga had submitted, amongst other things, that the Democratic Republic of the Congo (DRC) was able to prosecute him and that, accordingly, he should not be prosecuted before the ICC. Germain Katanga was transferred to the ICC on 17 October 2007. The charges against him were confirmed by Pre-Trial Chamber I on 26 September 2008. He and Mathieu Ngudjolo Chui allegedly jointly committed, through other persons, crimes against humanity (murder; sexual slavery; and rape) and war crimes (using children under the age of 15 to participate actively in hostilities; intentionally directing an attack against a civilian population as such or against individual civilians not taking direct part in hostilities; willful killing; destruction of property; sexual slavery; and rape). (<http://www.icc-cpi.int/Menus/ICC/Press+and+Media/Press+Releases/>). Meanwhile, the trial of the two men began on 24 November 2009. They both pleaded not guilty to the charges. For details see <http://jurist.law.pitt.edu/paperchase/2009/11/icc-begins-trial-for-congolese.php>.

In its decision of 5 November 2009, Trial Chamber III of the ICC set the date for the commencement of the trial in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* for Tuesday 27 April 2010. Jean-Pierre Bemba Gombo is allegedly criminally responsible, as a person effectively acting as military commander within the meaning of article 28(a) of the Rome Statute, for two crimes against humanity (murder and rape) and three war crimes (murder, rape and pillaging), allegedly committed on the territory of the Central African Republic from (or about) 26 October 2002 to 15 March 2003. Mr. Bemba was arrested in Belgium in execution of a warrant of arrest delivered by the Pre-Trial Chamber of the ICC. He is currently detained at the detention centre of the ICC at Scheveningen in The Hague. For details see <http://www.icc-cpi.int/Menus/ICC/Press+and+Media/Press+Releases/>.

(Moses Sande)

On 6 November 2009 the Presidency of the ICC issued a decision assigning the situation in the Republic of Kenya (the violence after the 2007 elections) to Pre-Trial Chamber II, after the ICC's Prosecutor had indicated his intention to submit a request for the authorization of an investigation into that situation. On 26 November 2009, the Prosecutor did submit such a request. Kenya ratified the Rome Statute on 15 March 2005 thereby becoming a State Party. See [http://www.icc-cpi.int/menus/icc/press%20and%20media/press%20releases/press%20releases%20\(2009\)/pr473](http://www.icc-cpi.int/menus/icc/press%20and%20media/press%20releases/press%20releases%20(2009)/pr473) and http://www.icc-cpi.int/NR/rdonlyres/A2B59665-397C-4C47-9CFA-18958E6AB28C/281313/LMOINTROstatement26112009_2_2.pdf.

On 15 October 2009 the International Criminal Court confirmed that its prosecutor is looking into September's events in Guinea, where at least 150 people were killed when security forces opened fire on an opposition rally (<http://www.icc-cpi.int/Menus/ICC?lan=en-GB>). "A preliminary examination of the situation has been immediately initiated in order to determine whether crimes falling under the Court's jurisdiction have been perpetrated", according to a news release issued by the Court (<http://www.icc-cpi.int/NR/exeres/15635D10-F118-4398-8A8D-E15E56465FA7.htm>). The Court said that the Prosecutor's Office has taken note of serious allegations surrounding the events of 28 September 2009 in Conakry, the capital. Guinea has been a State Party to the Rome Statute, which set up the ICC, since July 2003.

On 19 October 2009 the ICC began a hearing into whether to confirm war crimes charges against a rebel leader accused of having directed the deadly September 2007 attack against peacekeepers in Darfur (<http://www.icc-cpi.int/Menus/ICC>). Bahr Idriss Abu Garda is charged with three war crimes - murder, attacks against a peacekeeping mission and pillaging - allegedly committed when 1,000 rebels attacked the Haskanita camp in South Darfur State on 29 September 2007. Twelve peacekeepers serving with the African Union Mission in Sudan (AMIS), a predecessor to the joint UN-African Union peacekeeping mission, known as UNAMID, were killed and eight others wounded in the attack. Mr. Abu Garda, who is the first person to appear before the court voluntarily in response to a summons, commands a splinter group of the rebel Justice and Equality Movement (JEM) and will face trial if the charges are confirmed at the hearing. Abu Garda first appeared before the ICC in May 2009 when he was informed of the crimes he is alleged to have committed and of his rights.

(Frederik Naert, KU Leuven)

African Court on Human and People's Rights (AfCHPR)

The AfCHPR issued its first decision on 15 December 2009, finding that it lacks jurisdiction to hear a case against Senegal on whether charges against former Chadian president Hissene Habre should be dropped. Chadian national Michelot Yogogombaye filed a petition with the court last year seeking to suspend the planned Senegalese trial of Habre. The court unanimously dismissed the case for lack of jurisdiction. The Court concluded that Senegal has not accepted the jurisdiction of the Court to hear cases instituted directly against it by individuals or non-governmental organizations. As such, it lacked jurisdiction to hear the application. Habre, who has been accused of involvement in the murder or torture of more than 40,000 political opponents during his rule from 1982 to 1990, fled to Senegal after being overthrown in 1990. Belgium has sought to try him under the principle of universal jurisdiction, but Senegal has long refused extradition.

Eleven judges were sworn in in 2006, despite criticism for lack of transparency in the nomination process. The AfCHPR was officially created by a 1998 AU Protocol. For details visit <http://jurist.law.pitt.edu/paperchase/2008/09/african-rights-court-criticized-for.php>.

European Court of Human Rights (ECtHR)

The European Court of Human Rights ruled on 20 October 2009 that Turkish authorities violated article 10 of the European Convention on Human Rights in shutting down four newspapers considered propaganda in favour of the Kurdistan Workers' Party (PKK). The daily publications were shut down for periods of 15 days to one month between November 2006 and October 2007 on the orders of an Istanbul court. The unanimous ruling by the ECHR found that this periodic closure was in violation of Article 10 of the European Convention on Human Rights which guarantees freedom of the press in signatory states. The Court held that less draconian measures could have been envisaged by the Turkish authorities, such as confiscation of particular issues of the newspapers or restrictions on the publication of specific articles. The Court held unanimously that by having suspended entire publications, however briefly, the authorities had restricted unjustifiably the essential role of the press as a public watch-dog in a democratic society, in violation of Article 10. The PKK is designated as a terrorist group by the Turkish government and has engaged in an often violent struggle for autonomy in the Kurdish populated southeast. Since August, Prime Minister Recep Tayyip Erdogan has sought to end the 25-year conflict which has been a major impediment to Turkey's bid to join the European Union (EU). For details see <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=856481&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649;> and <http://jurist.law.pitt.edu/paperchase/2009/10/europe-rights-court-rules-turkish.php>.

International Criminal Tribunal for the Former Yugoslavia (ICTY)

On 8 October 2009 the ICTY President Patrick Robinson presented the Tribunal's sixteenth annual report to the UN General Assembly. The President updated Member States on the achievements of the Tribunal in the past year and the challenges it faces in ensuring the successful completion of its mandate. The President informed the Assembly that the number of cases fully completed by the Tribunal stands at 86 encompassing 120 accused. The President further informed the Assembly that he estimated the completion of the Tribunal's current trial caseload to be early 2012 with the trial of Radovan Karadžić and all appellate proceedings by mid-2013. On the issue of the two remaining fugitives, Ratko Mladić and Goran Hadžić, the President urged the Member States to do all they can to ensure they are arrested and brought into the Tribunal's custody before the end of its mandate arguing that failure to do so "will leave a stain on the historic contribution of the United Nations to peace-building in the former Yugoslavia." For more details visit <http://www.icty.org/sid/10244>.

(Moses Sande)

The trial of former Bosnian Serb leader Radovan Karadžić before the ICTY started on 26 October 2009 but he refused to appear for the scheduled commencement of trial. On 20 November 2009 the ICTY appointed British lawyer Richard Harvey to represent Karadžić in case he continues to boycott the trial in March 2010 by obstructing the proper and expeditious conduct of the trial. If he indeed continues, Karadžić will forfeit his right to self-representation, he will be no longer entitled to assistance from his assigned defence team, and the appointed counsel will take over as an assigned counsel to represent him. See <http://www.icty.org/sid/10262>; <http://www.icty.org/sid/10250>; and <http://jurist.law.pitt.edu/paperchase/2009/11/icty-appoints-uk-lawyer-to-represent.php>.

On 12 October 2009 the ICTY Appeals Chamber dismissed the appeal in which Mr. Karadžić had contested the rejection in July by the ICTY of his claim to immunity from prosecution due to an alleged agreement of 1996 with Richard Holbrooke. The Appeals Chamber *inter alia* found that as the only basis for limiting or amending the ICTY's jurisdiction is a Security Council resolution, under no circumstance the alleged agreement would in and of itself, even if its existence was proved, limit the jurisdiction of the ICTY (see <http://www.icty.org/x/cases/karadzic/acdec/en/091012.pdf>).

(Alfons Vanheusden)

Special Court for Sierra Leone

On 26 October 2009 the Special Court for Sierra Leone (<http://www.sc-sl.org/>) upheld the convictions and sentences passed on three former rebels. The three former leaders of the rebel Revolutionary United Front (RUF) were convicted earlier in 2009 for atrocities committed during Sierra Leone's decade-long civil war but appealed. The charges against them included forced marriage as a crime against humanity and attacks against UN peacekeepers – the first time for an international criminal tribunal to enter guilty verdicts for both charges. The Court dismissed all the appeals of the defendants, except two regarding Augustine Gbao, in respect of which convictions were overturned. He will however still have to serve the 25-year sentence originally imposed on him for the convictions that were upheld. The other defendants, Issa Sesay and Morris Kallon, will serve 52 years and 40 years, respectively. See <http://www.sc-sl.org/LinkClick.aspx?fileticket=HEuoXydNgQ4%3d&tabid=53>; and <http://www.sc-sl.org/CASES/ProsecutorvsSesayKallonandGbaoRUFCase/AppealJudgment/tabid/218/Default.aspx>. The remaining trial involving former Liberian president Charles Taylor is continuing in The Hague.

(Frederik Naert, KU Leuven)

International Criminal Tribunal for Rwanda (ICTR)

Idelphonse Nizeyimana, a former senior Rwandan military officer indicted by the ICTR for his role in the 1994 genocide in Rwanda, was arrested in Kampala, Uganda on 5 October 2009 by the National Central Bureau of Interpol in collaboration with the tracking team of the ICTR. On 6 October he was handed over to the ICTR. He was the former second in command for intelligence and military operations at the non-commissioned officers' school (<http://www.ictr.org/ENGLISH/PRESSREL/2009/616.html>). Nizeyimana, who faces counts of genocide or complicity in genocide, direct and public incitement to commit genocide and crimes against humanity, including ordering the execution of former Rwandan Queen Rosalie Gicanda, a symbolic figure for all Tutsis, entered a plea of not guilty on 14 October 2009 when he made his first appearance in the tribunal (see also press release at <http://www.ictr.org/default.htm>).

(Alfons Vanheusden)

The trial of Jean-Baptiste Gatete, the former Mayor of Murambi Commune in Byumba prefecture, commenced on 20 October 2009 with opening statements from the prosecution and defense before the ICTR. Gatete is charged with six counts of genocide including complicity in genocide, conspiracy to commit genocide, and crimes against humanity. As leader of the Interahamwe, a Hutu paramilitary group, Gatete is thought to be responsible for the massacre of thousands of Tutsis who had taken refuge in churches, as well as ordering the widespread rape of women in the parishes. For more details see <http://jurist.law.pitt.edu/paperchase/2009/10/rwanda-genocide-tribunal-begins-trial.php>.

On 22 October 2009 INTERPOL announced that Emmanuel Uwayezu, a former director of the Groupe Scolaire Marie Merci college in Kibeho, had been arrested in Italy. He had been sought by Rwandan authorities in connection with the killings of approximately 80 Gikongoro province students in May 1994. Uwayezu will be extradited to Rwanda, where he faces charges of genocide, conspiracy and other crimes. For details visit <http://jurist.law.pitt.edu/paperchase/2009/10/interpol-arrests-rwanda-genocide.php>.

On 5 November 2009 the ICTR sentenced former director of the Rwanda tea industry Michel Bagaragaza to eight years in prison on charges of complicity in genocide. Bagaragaza was accused of training, funding, and arming the Interahamwe Hutu militia responsible for the deaths of thousands of Tutsis during the 1994 Rwandan genocide. In explaining the leniency of the sentence in relation to the charge, the trial chamber of the ICTR stated that *"Bagaragaza has provided invaluable assistance to the Prosecution in its investigations. His assistance started before he was indicted without concern for self-incrimination, continued without reservation after he was indicted and detained, and he has indicated his willingness to also assist in the future. Bagaragaza has thereby, to a remarkable degree, contributed to the process of truthfinding with respect to the Rwandan tragedy and to national reconciliation. This warrants a substantial reduction of the sentence that the gravity of his offence would otherwise carry."* For details see <http://jurist.law.pitt.edu/paperchase/2009/11/former-rwanda-tea-official-sentenced-to.php>.

(Moses Sande)

On 17 November 2009 the ICTR acquitted Hormisdas Nsengimana, a priest who had been charged with genocide and crimes against humanity, and ordered his immediate release. The Trial Chamber said the Prosecution failed to establish the factual and legal basis to convict Mr. Nsengimana. See <http://www.ictr.org/ENGLISH/PRESSREL/2009/625.htm>.

On 16 November 2009 the ICTR acquitted and released Protais Zigiranyirazo, brother-in-law of the former Rwandan President, after a successful appeal to overturn his conviction for genocide and crimes against humanity. The Appeals Chamber found several serious factual and legal errors in the Trial Chamber's assessment of Mr. Zigiranyirazo's alibis, in relation to both events on which his convictions were based. See <http://www.ictr.org/ENGLISH/cases/Zigiranyirazo/decisions/091116.pdf>; and <http://www.ictr.org/ENGLISH/PRESSREL/2009/624.htm>.

National Developments

Court of BiH Finds Milorad Trbić guilty of genocide

On 16 October 2009 the War Crimes Section of the Court of Bosnia and Herzegovina found Milorad Trbić guilty of genocide and sentenced him to 30 years in prison. The court found that Trbić participated in a joint criminal enterprise the common purpose of which was to "capture, detain, summarily execute and bury all able bodied Bosniak (Muslim) males from Srebrenica enclave", according to a press release issued by the Court. Trbić's case was referred to the authorities in BiH in accordance with Rule 11bis of the ICTY's Rules of Procedure and Evidence. See *ICTY Digest No. 66*, 26 October 2009.

Alleged Rwandan war criminal arrested in Canada

On 6 November 2009 the Royal Canadian Mounted Police arrested Jacques Mungwarere, a 37-year-old Rwandan man, in southern Ontario, Canada and charged him with war crimes related to the 1994 genocide in his home country. He becomes the second person to be charged with genocide under the Crimes Against Humanity and War Crimes Act, which became law in Canada in October 2000. Last May, Desire Munyaneza became the first person ever convicted under Canada's War Crimes Act. A Quebec judge sentenced him to life in prison in October, with no chance of parole for 25 years. See M. Brewster, 'RCMP Arrest and Charge Alleged Rwandan War Criminal after 6-year Probe', *Canadian Press*, 7 November 2009.

(Frederik Naert, KU Leuven)

Local judges in Eastern Chad receive UN training to combat impunity

The United Nations has started a programme to train local judges in eastern Chad in a bid to end impunity in this region. Overall the scheme, run by the UN Development Programme (<http://www.undp.org/>) and the UN Mission in Chad and the Central African Republic (<http://www.un.org/en/peacekeeping/missions/minurcat/>), aims to train 148 local officials. For more details go to <http://www.un.org/apps/news/story.asp?NewsID=33208&Cr=chad&Cr1>.

(Alfons Vanheusden)

UN report condemns trial in DRC Military Court over killing of journalist

A joint report by the UN mission in DRC and the UN Office of the High Commissioner for Human Rights released on 17 November 2009 criticized the judicial process in a Democratic Republic of the Congo (DRC) military court in connection with a murdered Congolese journalist Serge Maheshe in June 2007. It concluded that the judicial process was "interspersed with several irregularities suggesting that the judiciary authorities lack the will to establish the truth" and noted that the guarantees for a just and fair trial were not respected by the South Kivu Military Court. The UN High Commissioner for Human Rights called on the international community to help strengthen technical and logistical support to the Congolese judicial institutions and reinforce resources for all the members of the judiciary, civilian and military. See <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/509B106F27CA9CC7C1257671004D12D0?opendocument> (with links to the English and French text of the report).

(Frederik Naert, KU Leuven)

German constitutional court upholds ban on public support of Nazi regime

On 17 November 2009 the German Federal Constitutional Court upheld legislation prohibiting public support and justification of the Nazi regime. For more information see <http://jurist.law.pitt.edu/paperchase/2009/11/germany-constitutional-court-upholds.php>.

For more information on courts currently dealing with the acts of alleged Nazi war criminals, see also <http://jurist.law.pitt.edu/paperchase/2009/11/germany-constitutional-court-upholds.php> (Demjanjuk) and <http://jurist.law.pitt.edu/paperchase/2009/10/germany-appeals-court-rules-trial-of.php> (John Demjanjuk, Johann Leprich, Anton Tittjung and Josias Kumpf).

(Moses Sande)

Independent probe Into Guinea 'blood bath'

On 30 September 2009, days after security forces opened fire on an opposition rally in Guinea, killing over 130 people, the UN High Commissioner for Human Rights called for an independent inquiry into what she described as a "blood bath." On 16 October 2009, the UN Secretary-General announced that he will set up an international commission of inquiry to probe this violent crackdown, "with a view to determining the accountability of those involved." The announcement of the commission of inquiry comes a day after the Prosecutor's Office at the International Criminal Court initiated a preliminary examination of whether the events of 28 September fall under the jurisdiction of the court (see elsewhere in the newsletter). See UN press release of 30 September and 16 October 2009; <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/76963B60BB898512C125764100538307?opendocument>; and <http://www.un.org/apps/sg/sgstats.asp?nid=4166>. Secretary-General Ban Ki-moon received the report and transmitted it to the Government of Guinea, as well as to the Security Council, the African Union (AU) and the Economic Community of West African States (ECOWAS) (See UN press releases of 17 and 19 December 2009).

Italy convicts 23 Americans for kidnapping

On 4 November 2009, an Italian judge convicted a base chief for the Central Intelligence Agency and 22 other Americans, almost all C.I.A. operatives, of kidnapping Osama Moustafa Hassan Nasr, a Muslim cleric, from the streets of Milan on 17 February 2003. However, it seems highly unlikely that anyone, Italian or American, would spend any time in prison. Judge Oscar Magi handed an eight-year sentence to Robert Seldon Lady, a former C.I.A. base chief in Milan, and five-year sentences to the 22 other Americans, including an Air Force colonel. Three of the other high-ranking Americans enjoyed diplomatic immunity, including Jeffrey Castelli, a former C.I.A. station chief in Rome. All the Americans were tried in absentia and are considered fugitives and had pleaded not guilty. Citing state secrecy, the judge did not convict five high-ranking Italians charged in the abduction, including a former head of Italian military intelligence, Nicolò Pollari. For more details see R. Donadio, 'Italy Convicts 23 Americans for C.I.A. Renditions', *New York Times*, 5 November 2009.

UN probe into Gaza conflict

On 29 September 2009 Justice Richard Goldstone, the head of the UN fact-finding mission into the Gaza conflict, urged an end to impunity for human rights violations committed there earlier in 2009 according to the mission's report that was released on 15 September (see Newsletter 2009/3). Justice Richard Goldstone urged the Human Rights Council to implement a number of measures, including referral of the mission's report to the Security Council, since neither the Government of Israel nor the responsible Palestinian authorities have so far carried out any credible investigations into alleged violations. On 16 October 2009 the Human Rights Council strongly condemned a host of Israeli measures in the occupied Palestinian territory and called on both sides to implement the recommendations of the UN commission. In a resolution, adopted by 25 votes in favour, six against, and 11 abstentions, the Council recommended that the General Assembly consider the Goldstone report during the main part of its current session, requested Secretary-General Ban Ki-moon to submit a report on the implementation of its recommendations to the Council in March and condemned Israel's refusal to cooperate with the commission. Much of the resolution was also devoted to other Israeli activities. On 5 November 2009, the UN General Assembly endorsed the report of the UN investigation, with 114 votes in favour, 18 against and 44 abstention. The Assembly called

on all concerned to devote themselves to implementing the contents of the resolution, which asks both the Israelis and Palestinians to carry out independent inquiries. See UN General Assembly Resolution A/RES/64/10 (5 November 2009), UN press releases of 29 September, 16 October; 5 November 2009; and <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/12/index.htm>.

(Frederik Naert, KU Leuven)

UN Reparations Panel For Kuwait Invasion pays out \$610 Million

On 29 October 2009 the United Nations Compensation Commission (UNCC) (<http://www.uncc.ch/>), which settles the damage claims of those who suffered losses due to Iraq's 1990 invasion of Kuwait, made \$610 million available to 10 successful claimants. The latest round of payments brings the total amount of compensation disbursed by the Commission to individuals, corporations, governments and international organizations to more than \$28 billion. For more information see <http://www.uncc.ch/pressrel/Press%20release%20-%20Payment%20of%2029%20October%202009.pdf>; and <http://www.un.org/apps/news/story.asp?NewsID=32766&Cr=kuwait&Cr1=>.

Somalia and piracy

The head of the United Nations International Maritime Organization (IMO), Secretary-General Efthimios Mitropoulos, pledged that his agency will help Somalia repress piracy off its coast and in the Gulf of Aden, including through assisting in the creation of a national coast guard. For more details go to <http://www.un.org/apps/news/story.asp?NewsID=32812&Cr=piracy&Cr1=>.

(Alfons Vanheusden)

Ban deplores killing of AU peacekeepers in Somalia

On 17 September 2009 UN Secretary-General Ban Ki-moon condemned the suicide bombing at an African Union compound in the Somali capital, Mogadishu, which left at least nine AMISOM peacekeepers dead, including the Deputy Force Commander, and wounded 30 others, including the Force Commander. Two vehicles, reportedly with UN markings on them, were used in the attack. See UN press release of 17 September 2009.

(Frederik Naert, KU Leuven)

Spanish Parliament approves law limiting universal jurisdiction statute

On 15 October 2009 the Spanish Congress of Deputies gave final approval to a law limiting use of Spain's universal jurisdiction statute to those offenses committed by or against Spaniards, or where the perpetrators are in Spain. (For more information go to <http://jurist.law.pitt.edu/paperchase/2009/10/spain-parliament-passes-law-limiting.php> and see also Newsletter 2009 – 3).

Developments in the UK

On 16 October 2009 a British High Court ruled that previously redacted torture allegations of former Guantanamo detainee Binyam Mohamed should be publicly disclosed. For more details see <http://jurist.law.pitt.edu/paperchase/2009/10/uk-high-court-orders-disclosure-of.php>.

On 12 December 2009 Saddam Hussein's former lawyer asked the British attorney general for consent to prosecute former Prime Minister Tony Blair for violations of the Geneva Conventions. For more details visit <http://jurist.law.pitt.edu/paperchase/2009/12/saddam-lawyer-seeking-consent-to.php>.

(Moses Sande)

The Westminster Magistrates' Court in London issued a warrant for the former Israeli Foreign Minister, Ms Tzipi Livni, on 12 December 2009. Ms Tzipi Livni held the office of Foreign Affairs during Israel's three-week Gaza offensive that began on 27 December 2008 during which war crimes were allegedly committed by the Israeli armed forces. This allegation is strongly denied by Israel. The warrant was revoked 2 days later after it was revealed that Ms Livni cancelled her plans to visit the United Kingdom.

This wasn't the first time that pro-Palestinian campaigners have tried to have the principle of universal jurisdiction applied in cases against Israeli officials. Following this principle, the United Kingdom would be allowed to prosecute and judge a person accused of international crimes, without there being a link between the United Kingdom and either the territory where the crime was committed, the nationality of the perpetrator or the nationality of the victims.

Ms Livni argued the request for a warrant was an abuse of the British legal system and defines it as a lawsuit, not against her person or against Israel, but against 'any democracy fighting terror'. She stands by every decision made at the time of the offensive in Gaza and refers to the warrant issue as a 'cynical act'. An 'absurd act' confirms the Israeli Prime Minister, Mr Benjamin Netanyahu.

The British foreign office stated that it is determined to be a strategic partner of Israel. Possible future warrants would inevitably damage the relations between both countries. Thus, the United Kingdom keen to protect these ties, is now looking for ways of legal reform so as to prevent arrest warrants to be requested and issued without any prior knowledge or advice by a prosecutor. Source: <http://news.bbc.co.uk>.

Developments in the US

The Thomson Correctional Center, a near-empty correctional facility in Illinois is to be bought by the US federal government in order to house a number of inmates from Guantanamo Bay. The intention is for this to be a step on the road to the final closure of the Guantanamo prison where more than 210 prisoners remain today.

A number between 35 and 90 inmates presently at Guantanamo are to be transferred to the Illinois prison to face charges either by criminal trials or military tribunals or to be detained because they are deemed too dangerous to release but against whom there is no useable evidence. The latter applies to the majority of the detainees to be transferred to Illinois. The remaining Guantanamo detainees are to be transferred abroad.

In order to alleviate security concerns in the United States about inmates escaping, the Thomson Correctional Center will be upgraded. Although officials have said it was permissible to transfer Guantanamo detainees from the Cuba-based jail to US soil, questions on the legality of transfers for other purposes than prosecution remain.

Source: <http://news.bbc.co.uk>.

(Rosalie Daneels)

A judge in the US District Court for the District of Columbia refused on 16 October 2009 to force the Department of Defense (DOD) and Central Intelligence Agency (CIA) to release non-redacted versions of documents that allegedly describe the torture and abuse of 14 Guantanamo Bay detainees. For details see <http://jurist.law.pitt.edu/paperchase/2009/10/federal-judge-rules-against-releasing.php>.

The US Supreme Court on 16 October 2009 granted *certiorari* in the case of *Kiyemba v. Obama*. In the case the court will consider whether a group of 13 Uighur Guantanamo Bay detainees can be released into the US. For details see <http://jurist.law.pitt.edu/paperchase/2009/10/supreme-court-to-hear-uighur-guantanamo.php>.

On 20 October 2009 the US Senate voted in favor of a bill permitting Guantanamo Bay detainees to be brought to the US for trial. For details see <http://jurist.law.pitt.edu/paperchase/2009/10/senate-passes-bill-allowing-transfer-of.php>.

On 21 October 2009 two Guantanamo Bay military judges granted continuances for prosecutors in the cases of Noor Uthman Mohammed and Ibrahim al Qosi, two Sudanese detainees allegedly involved with al Qaeda. For details see <http://jurist.law.pitt.edu/paperchase/2009/10/military-judges-grant-continuances-in.php>.

On 16 November 2009 the US State Department confirmed that the US will send an observer to the ICC for the first time in 2009. For details visit <http://jurist.law.pitt.edu/paperchase/2009/11/us-to-send-first-observer-to-icc.php>.

On 24 November 2009 the US State Department stated that the US will not be signing the Anti-personnel Landmine Treaty to ban the use of anti-personnel landmines. For details see <http://jurist.law.pitt.edu/paperchase/2009/11/us-will-not-become-party-to-anti.php>.

(Moses Sande)

UNHCHR urges probe into Yemeni air raids

On 18 September 2009 the UN High Commissioner for human rights called on the Yemeni Government to launch an investigation into recent air raids that have resulted in civilian deaths, saying she was "deeply disturbed" in particular at a strike two days earlier against a camp for displaced persons in northern Yemen that killed dozens of the IDPs. See UN press release of 18 September 2009.

(Frederik Naert, KU Leuven)

INTERESTING PUBLICATIONS

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*.

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

hb = hardback pb = paperback.

United States, International Law, and the Struggle against Terrorism, by Professor Thomas M. McDonnell was just published by Routledge. The url containing excerpts is available here: <http://ilreports.blogspot.com/2009/10/mcdonnell-united-states-international.html>.

The EU's Publications Office has published 'Access to legislation in Europe', a guide covering the following legal systems: the EU, its 27 Member States, the European Economic Area and the 4 Member States of the European Free Trade Association (EFTA). It can be ordered and is available online for free at http://bookshop.europa.eu/eubookshop/bookmarks.action?target=EUB:NOTICE:OA8108353:EN:HTML&request_locale=EN.

MATTEO TONDINI, *Statebuilding and Justice Reform: Post-conflict Construction in Afghanistan*, Routledge, 2010, ISBN: 978-0-415-55894-5: £75.00 (HB), www.routledge.com.

MARJA LETHO, *Indirect Responsibility for Terrorist Acts: Redefinition of the Concept of Terrorism Beyond Violent Acts*, Martinus Nijhoff, November 2009, 535 pp., ISBN 978-90-04-17807-6, € 165,00 / US \$ 244.00 (HB) , www.brill.nl.

MICHAEL W. REISMAN & KRISTEN EICHENSEHR, *Stopping Wars and Making Peace: Studies in International Intervention*, Martinus Nijhoff, December 2009, 230 pp., ISBN 978-90-04-17855-7, € 135,00 / US \$ 200.00 (HB), www.brill.nl.

YUTUKA ARAI, *The Law of Occupation. Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law*, Leiden/Boston, Martinus Nijhoff, 2009, 758 pp., ISBN 978-90-04-16246-4, € 195 EUR (HB), www.brill.nl.*

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FREDERIK NAERT, *International Law Aspects of the EU's Security and Defence Policy, with a Particular Focus on the Law of Armed Conflict and Human Rights*, Antwerp, Intersentia, 2009, ISBN 978-90-5095-771-7, xxviii + 682 pp., www.intersentia.be.*

MORTEN BERGSMO, KJETIL HELVIG, ILIA UTMELIDZE & GORANA ŽAGOVEC, *The Backlog of Core International Crimes Case Files in Bosnia and Herzegovina*, FICHL Publication Series No. 3, 2009, ISBN 978-82-7288-304-0, 175 pp., September 2009, [www.prio.no/upload/FICHL/FICHL\(3\)_Backlog%20in%20BiH.pdf](http://www.prio.no/upload/FICHL/FICHL(3)_Backlog%20in%20BiH.pdf).

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KENDRA E. DUPUY & KRIJN PETERS, *War and Children: A Reference Handbook*, Praeger Publishers, November 2009, 248 pp., ISBN 978-0-313-36208-8, \$44.95 / £31.95 (HB), www.praeger.com.

(Matteo Tondini and Moses Sande)

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