



NEWS FLASH N° 20

(September 2014)

Upcoming Events / Événements futurs

Germany

The *German Group of the International Society for Military Law and the Law of War* will hold its next conference in Speyer (Germany) from **6 to 7 October 2014**. The title of the conference is “**Moderne Waffentechnologie – halt das Recht Schritt?**”. The conference will focus on legal, technical and ethical questions related to new weapon technologies. The conference will be held in the German language. The *Deutsche Universität für Verwaltungswissenschaften*, which will host the conference, offers rooms in the Guest House of the University for 40 euro per night. Registration for the conference is now possible. For more information please visit the website of the *German Group* at www.dgwhv.de.

India

The *Amity Law School, NOIDA*, will hold its **4th annual Amity International Moot Court Competition** from 8 to 10 October 2014 at the Amity Law School, National Capital Region, India. The focus of this edition of the Moot Court Competition will be on intricate issues pertaining to international humanitarian law and refugee law, keeping in mind the current scenario and prospective situations at the global level, with the objective to test the legal acumen and application of law students through their intellectual rigor. For more information please visit <http://amityinternationalmoot2014.weebly.com>.

Belgium

The *International Society for Military Law and the Law of War*, the *International Committee of the Red Cross*, and the *Royal Higher Institute for Defense (Belgium)* will hold the **Flanders Fields Conference of Military Law and the Law of War in Ypres (Belgium)** from **12 through 15 October 2014**. The event forms part of the activities commemorating the centenary of the outbreak of World War I. The event also enjoys the institutional support of the *Institute for International Affairs* of the *University of*

Hamburg, as well as the *Melbourne Law School* and the *Asia-Pacific Centre for Military Law*.

The conference is built around 4 themes:

- Legal and policy issues associated with chemical weapons;
- The application of international humanitarian law in the conduct of hostilities;
- The protection of specific groups in situations of armed conflict; and
- Military justice in difficult circumstances.

For additional information on this conference see the *Society's* website. The deadline for registrations is 9 September 2014!

Belgium:

The *University of Ghent*, in partnership with the *Vrije Universiteit Brussel*, *Université catholique de Louvain – Mons* and the *Université libre de Bruxelles*, will be hosting an **international two-day conference at the occasion of the twentieth anniversary of the entry into force of the UN Convention on the Law of the Sea from 13 to 14 November 2014**. The conference will pause at the success of the Montego Bay Convention in governing the use of the oceans and it will look ahead and examine to what extent the Convention is properly equipped to withstand the various challenges ahead, including inter alia, competing territorial and maritime claims in the South and East China Seas and in the Arctic, the fight against piracy, future exploitation of the deep sea bed, ocean pollution, the increased recourse to the UNCLOS dispute settlement regime, etc.

A keynote lecture will tackle the United States position vis-à-vis the Convention and there will be four different panels, which will address the importance of UNCLOS for:

- The maintenance of international peace and security;
- The global economy;
- The protection of the marine environment; and
- The Convention's compulsory dispute settlement mechanism.

For additional information, please visit: <https://ugent.be/re/internationaal-publiekrecht/en/research/conferences/unclos.htm>

Colombia

The *International Society for Military Law and the Law of War*, the *General Secretariat of the Conference of American Armies*, the *Pontificia Universidad Javeriana* and the *Superior Military Tribunal of Brazil* are very pleased to announce the joint organisation of an

International Conference, which will be hosted at the Military Club in **Bogotá, Colombia from 19 to 22 November 2014.**

The central theme of the conference will be “*Transitional Law and Beyond*” and the programme will include presentations and panel discussions by academic speakers and experienced professionals on:

- Military Jurisdiction;
- The Soldier as a Victim of Armed Conflicts;
- Law and Post-Conflict Situations;
- Responsibilities of the State to the Members of the Armed Forces.

For additional information on this conference see the *Society's* website.

Czech Republic

The **20th Congress of the *International Society for Military Law and the Law of War*** will take place in **Prague (Czech Republic)** from **21 through 25 April 2015.**

The plenary session of this Congress will deal with **Challenges in the Implementation of International Humanitarian Law**. The topic of this session will be prepared on the basis of the national responses to a specific questionnaire inspired by a workshop hosted by the *Society* in Brussels on 23 September of last year. The questionnaire is built around five aspects:

- Imperfect implementation of IHL;
- Progress through international criminal law;
- Lessons learned from other areas of law;
- Specific responsibilities for States not directly involved in an ongoing armed conflict; and
- Non-State actors.

More information about the 20th Congress will be published on the website of *Society*.

Ciardi Prize / Prix Ciardi

The Italian PROF. GIUSEPPE CIARDI FOUNDATION will award its scientific prize in 2015 for the overall amount of 1.500 €.

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

The submitted works must have been published after 1 January 2012 and must be written in English, French, German, Italian or Spanish.

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

The submitted works need to be sent in three copies, by postal mail, before 1 November 2014 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, Via degli Acquasparta, 2 - 00186 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 Military Law and the Law of War*, in order to increase the number of scientific works to be considered for the award, may submit a list of works, based *inter alia* on both the book reviews published in *the Military Law and the Law of War Review/Revue de Droit Militaire et de Droit de la Guerre*, and the articles published in the said journal, after having sought the consent of the authors. The above lists must be submitted by mail with one copy of each work before 1 December 2014, with all necessary information regarding the author, to FONDAZIONE PROF. GIUSEPPE CIARDI, Presidente Dott.ssa Giovanna Ciardi, c/o Gruppo Italiano della Società di Diritto Militare e della Guerra, Via degli Acquasparta, 2 - 00186 ROMA ITALIA. Appropriate consideration will be given 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 eligible for the award.

The Jury has the faculty to award a second prize for the amount of 500 €. In this case, the winner of the first prize will be awarded 1.000 €. Other works may receive a special mention for exceptional scientific worth.

The proclamation of the winner(s) will take place at the XXth Congress of the *International Society for Military Law and the Law of War*, to be held in the city of Prague.

(Prof. Giuseppe Ciardi Foundation)

Selected recent developments in the Middle East (Gaza – Israel)

On 23 July 2014, the *UN Human Rights Council* adopted, in a special session, Resolution S-21 (2014) by a recorded vote of 29 to 1, with 17 abstentions. In this resolution the Council expressed its concern at the critical humanitarian situation in the Gaza Strip and condemned the widespread, systematic and gross violations of international human rights and fundamental freedoms, arising from the Israeli military operations carried out in the Occupied Palestinian Territory since 13 June 2014.

The UN Human Rights Council demanded in this resolution that Israel, as the occupying power, immediately and fully ends its illegal closure of the occupied Gaza Strip. Furthermore, it decided to dispatch an *Independent, International Commission of Inquiry*. This commission will investigate all violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, and particularly in the occupied Gaza Strip. The assignment of the Commission of Inquiry is to establish the facts and circumstances of such violations and of the crimes perpetrated, to identify those responsible and to make recommendations, in particular on accountability measures. This all with the objective to avoid and end impunity and to ensure that those responsible are held accountable. The commission will report to the Council at its twenty-eight session. In addition, the UN Human Rights Council requested the High Commissioner to report on the implementation of this resolution to the Human Rights Council at its twenty-seventh session.

On 24 July 2014, there was a strike on a UN-run school in Beit Hanoun, Gaza. Media reports said that at least 15 people died as a consequence of an Israeli mortar striking the courtyard, but according to an IDF investigation into the strike, the courtyard was empty of people at the time of the attack. The Israeli investigation says that the IDF fired mortars toward Palestinian militants who shot antitank missiles from the area of the school. The UN Secretary-General emphasized to all sides that they must abide by their international obligations to respect the sanctity of civilian life and the inviolability of UN premises, and to honour their obligations to humanitarian workers.

On 28 July 2014, the *UN Security Council* issued a Statement by the President of the Security Council (S/PRST/2014/13), in which it expressed concern regarding the deterioration in the situation as a result of the crisis related to Gaza and the loss of civilian lives and casualties. The UN Security Council called for an immediate and unconditional humanitarian ceasefire, based on the Egyptian initiative, allowing for the delivery of urgently needed humanitarian assistance to the Gaza Strip. In

addition, the Council demanded the full implementation of resolution 1860 (2009) calling for an immediate, durable and fully respected ceasefire, leading to the full withdrawal of Israeli forces from Gaza. Furthermore, the Council stressed the need for immediate provision of humanitarian assistance to the Palestinian civilian population in the Gaza Strip. The *Secretary-General* joined the UN Security Council in calling on the parties to agree on an immediate and unconditional ceasefire.

On 11 August 2014, the *UN Human Rights Council* appointed the members of the Independent, International Commission of Inquiry to investigate purported Gaza violations, in line with Resolution S-21 of 23 July 2014. The Council appointed Amal Alamuddin (United Kingdom), Doudou Diène (Senegal) and William Schabas (Canada), who will also serve as the Commission's Chair, to serve as members on the international Commission. Since this announcement, the Commission has been operational. On 12 August 2014, it was announced that Ms. Alamuddin was unavailable to serve on the Commission due to prior professional commitments.

On 15 August 2014, the *Foreign Affairs Council* of the *Council of the European Union* held its meeting in Brussels. In the Council Conclusions on the Middle East (Gaza), the EU expressed its concern about the fragile situation and the disastrous humanitarian situation in the Gaza Strip. It called for increased efforts to facilitate, in accordance with international humanitarian law, immediate and unimpeded humanitarian access into the Gaza Strip. The Council stated that a durable ceasefire must lead to a fundamental improvement in the living conditions for the Palestinian people in the Gaza Strip, through lifting the Gaza closure regime, and that it must end the threat to Israel posed by Hamas and other militant groups in Gaza.

It was stated in the Council Conclusions that the EU is ready to contribute to a comprehensive and sustainable solution enhancing the security, welfare and prosperity of Palestinians and Israelis alike and that it will develop options for effective and comprehensive action (with regard to movement and access, capacity building, verification and monitoring, humanitarian relief and post-conflict reconstruction and rehabilitation) through international donor efforts. Moreover is the EU ready to support a possible international mechanism endorsed by the UN Security Council. In line with UN Security Council Resolution 1860 (2009), the EU is furthermore prepared to contribute to arrangements that prevent illicit trafficking in arms and ammunition to the Gaza Strip and which can ensure the sustained re-opening of Gaza's crossing points. The EU also recalls that the situation in the Gaza Strip has to be seen within the broader context of the Middle East Peace Process.

On 25 August 2014, the *UN Human Rights Council* appointed the final member of the Independent International Commission of Inquiry, which is charged to investigate the purported Gaza violations. This third member is Mary McGowan Davis of the United States.

On 26 August 2014, Israel and Hamas agreed to a general ceasefire of unlimited duration, brokered by Egypt. This implies that the state of war goes on, but, temporarily, there is no actual warfare. It should provide a breathing space for the negotiation of more lasting agreements, such as peace terms, without being subjected to excessive pressure (Y. DINSTEIN, *War, aggression and self-defence*, fifth edition, Cambridge University Press, 2011, p. 56 – 57). Next to this ceasefire agreement, the borders with Gaza will be opened so that humanitarian aid and construction materials can be brought in. The Spokesman for the UN Secretary-General stated that Gaza must be brought back under one legitimate Palestinian Government adhering to the PLO commitments; that the blockade of Gaza must end and that Israel's legitimate security concerns must be addressed. Furthermore stands the UN ready to support efforts to address the structural factors of the conflict between Israel and Gaza. The Secretary-General considers the two-state solution as the only viable option and urgently calls on both parties to return to meaningful negotiations towards a final status agreement that addresses all core issues and ends the 47-year occupation.

For more information, please visit:

UNHRC Resolution:

<http://www.ohchr.org/EN/HRBodies/HRC/SpecialSessions/Session21/Pages/21stSpecialSession.aspx>

UN News centre:

<http://www.un.org/apps/news/story.asp?NewsID=48341#.VARwckuLrgI>

IDF investigation:

<http://www.haaretz.com/news/diplomacy-defense/1.607384>

Statement by the President of the UN Security Council:

http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PRST/2014/13

Statements of the President of the UNHRC:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14939&LangID=E>

http://www.un.org/apps/news/story.asp?NewsID=48557#.U_3BHMaLrgI

Council of the European Union conclusions:

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/144313.pdf

Statement attributable to the Spokesman for the UN Secretary-General:

<http://www.un.org/sg/statements/index.asp?nid=7942>

(Ware Vercamer)

ECCC sentences Khmer Rouge leaders to life in prison

On 7 August 2014, a United Nations-backed court, the *Extraordinary Chambers in the Courts of Cambodia* (ECCC), has found the two most senior surviving leaders of

Cambodia's Khmer Rouge regime, Nuon Chea and Khieu Samphan, guilty of crimes against humanity committed between 17 April 1975 and December 1977, and sentenced them to life in prison (Case 002/01, 2014). The ECCC is a hybrid war crime tribunal established in 2006 (under a 2003 agreement signed by the UN and the Government of Cambodia) to try senior leaders and those most responsible for the crimes committed during the Khmer Rouge regime. The UN has deployed international judges, prosecutors and staff through the UN Assistance to the Khmer Rouge Trials.

In this case, the ECCC ruled that both Nuon Chea and Khieu Samphan participated in a joint criminal enterprise to achieve the common purpose of implementing a rapid socialist revolution through a 'great leap forward' by whatever means necessary, including the implementation of policies that forcibly displaced people from cities and towns and between rural areas. The ECCC further found that they implemented the common purpose through a policy to target former Khmer Republic officials. Nuon Chea and Khieu Samphan were found guilty of murder, extermination, political persecution and other charges of crimes against humanity. While the tribunal found only Nuon Chea responsible as a superior for all crimes committed, they each have the right to appeal the convictions and sentence imposed.

For more information, please visit:

<http://www.eccc.gov.kh/en/articles/nuon-chea-and-khieu-samphan-sentenced-life-imprisonment-crimes-against-humanity>

UN News Centre:

http://www.un.org/apps/news/story.asp?NewsID=48433#.U_XmncaLrgI

<http://www.un.org/apps/news/story.asp?NewsID=46383#.VAVvT1a0ZTA>

Judgement ECCC:

<http://www.eccc.gov.kh/en/document/court/case-00201-judgement>

Summary of the judgement:

<http://www.eccc.gov.kh/sites/default/files/articles/20140807%20FINAL%20Summary%20of%20Judgement%20ENG.pdf>

(Ware Vercamer)

Mothers of Srebrenica v. The Netherlands

On 16 July 2014, *The Hague District Court* found the Netherlands liable for the loss suffered by the in the judgment indicated relatives as a consequence of the deaths of about 320 men who were sheltering with Dutchbat in July 1995, when the *safe area* of Srebrenica fell. This case follows a related decision by the Dutch Supreme Court of 13 April 2012, in which the Supreme Court upheld the earlier decisions of the District Court of The Hague and the Court of Appeal of The Hague, confirming that the UN

enjoys absolute immunity from prosecution for the deaths at Srebrenica. This decision was later confirmed by the ECHR (Application no. 6554/12, 11 June 2013).

In the present case, the District Court ruled that, on account of an unlawful act, the State is liable for Dutchbat's cooperation with the deportation, in the late afternoon of 13 July 1995, of the able-bodied male refugees who had sought refuge at the compound in Potočari. The majority of these 320 men were never seen alive again. The liability of the State extends to the family members of the men who were carried off from the compound and subsequently killed by the Bosnian Serbs on 13 July 1995. This includes the spouses and children of the adult men and the parents of the underage men. Central to the Court's decision was the concept of *effective control* (understood as factual control), as a criterion to decide whether or not Dutchbat's actions are attributable to the State. That same effective control-concept stood central in the related judgements of the Supreme Court of the Netherlands of 6 September 2013 (The State of the Netherlands v. Hasan Nuhanović & The State of The Netherlands v. Mustafić and others). In these cases, the Supreme Court upheld the preceding decision of the Court of Appeal that the Dutch state is responsible for the deaths of three men at Srebrenica, since the Dutch State exercised effective control (defined as 'factual control over specific conduct') over Dutchbat. For more information on the latter cases, see News Flash 14.

For more information, please visit:

<http://opiniojuris.org/2014/07/17/mothers-srebrenica-decision-dutch-high-court-holds-netherlands-responsible-300-deaths-1995-massacre/>

<http://opiniojuris.org/2013/09/06/supreme-court-decision-srebrenica-massacre-netherlands-responsible/>

Judgment of 16 July 2014:

<http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2014:8562&keyword=srebrenica;>

<http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2014:8748>

Judgment of the Dutch Supreme Court of 13 April 2012:

<http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2013:BZ9228;>

<http://www.asser.nl/upload/documents/20120905T111510-Supreme%20Court%20Decision%20English%202013%20April%202012.pdf>

Judgment of the ECHR (2013):

[http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-4416460-5307356#{"itemid":\["003-4416460-5307356](http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-4416460-5307356#{)

Judgments of the Dutch Supreme Court of 6 September 2013

<http://www.rechtspraak.nl/Organisatie/HogeRaad/OverDeHogeRaad/publicaties/Documents/12%2003324.pdf>

<http://www.rechtspraak.nl/Organisatie/HogeRaad/OverDeHogeRaad/publicaties/Documents/12%2003329.pdf>

News Flash 14:

Independent, International Commission of Inquiry on Syria presents new report

On 27 August 2014, the *Independent, International Commission of Inquiry on the Syrian Arab Republic* presented its newest report (A/HRC/27/60) to the United Nations Human Rights Council (for more background, see News Flash 19). In this report it is stated that mass atrocities by Government forces and non-State armed groups continue to take place in Syria, causing immeasurable suffering to civilians and contributing to a spillover of violence affecting international peace and stability. It emphasizes that with the continuous influx of foreign fighters and the success of extremist groups, risks of the conflict spreading further are palpable.

This report concludes *inter alia* that:

- The conflict in the Syrian Arab Republic has morphed into multiple shifting conflicts involving countless actors and frontlines; violence has bled over the borders of the Syrian Arab Republic, with extremism fuelling the conflict's heightened brutality;
- The barest possibility of a normal life has been destroyed and this impact has been particularly grave for women and children whose most basic rights are infringed by the conduct of the parties;
- Clashes resulting from competition for resources have caused civilian deaths;
- Influential States have turned away from the difficult work required for a political solution and some States continue to deliver shipments of arms, artillery and aircraft or contribute logistical and strategic assistance to the Government;
- Recent events emphasize the urgency of finding a political settlement to the war and accountability forms an essential part of this process. As the Security Council has recognized in its resolutions 2139 (2014) and 2165 (2014), the protection of civilians is pivotal and victims of violations deserve effective redress.

The Commission reiterates the recommendations made in its previous reports and it recommends *inter alia* that all parties comply comprehensively with human rights and international humanitarian law and that they ensure the effective implementation of UN Security Council Resolutions 2139 (2014) and 2165 (2014). Furthermore the Commission recommends that the international community imposes an arms embargo and curb the proliferation and supply of weapons, and that it sustains funding for humanitarian operations, ensure access to victims in all areas and facilitate the expansion of humanitarian relief operations. To the UN Security Council the Commission recommends *inter alia* that it should take appropriate action by referring the situation to justice, possibly to the International Criminal Court, as only the Security Council is competent to refer the situation.

For more information, please visit:

News Flash 19:

<http://ismllw.org/NEWS/NEWS-FLASH-19.pdf>

UN News centre:

http://www.un.org/apps/news/story.asp?NewsID=48571#.U_8SOMaLrgJ

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14966&LangID=E>

Updated report on the work of the Commission of Inquiry on the situation in the Syrian Arab Republic:

http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A.HRC.27.60_Eng.pdf

(Ware Vercamer)

Publications of Interest/ Publications intéressantes

AMERICAN BAR ASSOCIATION, *The Military Law Sourcebook*, 2014 edition, ABA Book Publishing, 882 p., 2014.

For more information, please visit:

<http://shop.americanbar.org/eBus/Store/ProductDetails.aspx?productId=213248>

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