



NEWS FLASH N° 4

Call for papers for a Conference organized by the Armed Forces Law Association of New Zealand

Military Law in a New Dimension: Armed Forces Deployed against Transnational Crime and Terrorism

A Conference organised by the Armed Forces Law Association of New Zealand in conjunction with the Asia Pacific Centre for Military Law, University of Melbourne, and the Lieber Society, American Society of International Law

Melbourne Law School, Friday 26 – Sunday 28 August 2011

As the number of state-on-state armed conflicts declines, militaries around the world are being drawn into combating a wide variety of transnational crime and terrorist activity. Law enforcement rather than war fighting deployments have become mainstream activities for many armed forces. For over a decade, coalition forces have been involved in the war in Afghanistan and continue to be involved in combating maritime terrorism in the Middle East area of operations. In mid-2008 naval forces deployed to the Horn of Africa to combat the upsurge in piracy. Instances abound of armed forces involved in apprehending irregular migrants, illegal fishers and drug smugglers.

This conference will explore the complex and challenging legal issues for armed forces involved in combating transnational crime and terrorism. Themes addressed will include:

- Legal frameworks for military involvement – global, regional and national dimensions
- Legal interoperability – challenges in operating with coalition and other forces
- The civil-military interface
- Use of force and rules of engagement for new military environments
- Combating transnational crime and terrorism at sea
- Military justice procedures for forces engaged in combating transnational crime and terrorism

While the conference will focus on the legal aspects of combating transnational crime and terrorism, contributions from any of the disciplines within the humanities and social sciences are welcome.

Papers will be selected on the basis of an abstract of no more than **250 words**. Abstracts should be submitted by email to the Conference Convenors, Dr Robin Warner at rwarn@uow.edu.au and Dr Chris Gallavin at chris.gallavin@canterbury.ac.nz by **25 March 2011**. Enquiries should be directed to:

Dr Robin Warner, Associate Professor
Australian National Centre for Ocean Resources
and Security University of Wollongong, Australia

Dr Chris Gallavin, Senior
Lecturer
Faculty of Law
University of Canterbury, New
Zealand

Further information will be available at: <http://www.aflanz.org.nz/> and <http://www.laws.canterbury.ac.nz/>

Developments / Développements

German Federal Public Prosecutor closes investigation with respect to Kunduz air strikes

In April 2010, the German Federal Public Prosecutor (*Generalbundesanwalt*) closed his investigation against Colonel Klein, officer of the German *Bundeswehr*, for having ordered air strikes against two trucks hijacked by the Taliban near Kunduz in September 2009. In this airstrike an unknown number of people were killed, among them not only members of the Taliban but also civilians. Based on the facts that he found, the *Generalbundesanwalt* has reached the conclusion that Colonel Klein bears no criminal liability.

The *Generalbundesanwalt* classified the situation at the time of the air strike as a non-international armed conflict. Accordingly, international criminal law applied, which is codified in the German Code of Crimes against International Law (*Völkerstrafgesetzbuch*). However, the *Generalbundesanwalt* declined any violation of international criminal law, such as the war crime of intentionally launching an attack in the knowledge that such an attack will cause excessive loss of life to civilians, by arguing that Colonel Klein did not know about the presence of the civilians near the trucks and that he had done everything possible to assure him of the absence of civilians from the area of attack. Accordingly, he was not even aware that the attack would cause the death of civilians.

With respect to possible violations of ordinary criminal law, the *Generalbundesanwalt* held that this law in principle applies in addition to international criminal law. However, if an act is permissible as an act of war under international law, responsibility under ordinary criminal law is precluded. After a thorough interpretation of the international law of armed conflicts, the *Generalbundesanwalt* came to the conclusion that Colonel Klein had acted in conformity with international law. Consequently, any violation of ordinary criminal law was excluded. Klein was not obliged to give warnings, either, as he was allowed to assume that there were no civilians present in the area of attack.

Finally the *Generalbundesanwalt* underlined that violations of internal regulations, such as rules of engagement, do not affect the legal evaluation under international law, as these rules are not legally binding and accordingly can not restrict international law.

In addition to the press release issued in April 2010, the *Generalbundesanwalt* published the entire decision in an open version in October 2010 in order to inform the public as detailed as possible about this groundbreaking decision. In fact, this case for the first time ever in Germany required the application of the codes of crimes against international law. Also, it offered the opportunity for a thorough interpretation of the international law of armed conflicts.

(<http://www.generalbundesanwalt.de/de/showpress.php?heftnr=360&newsid=360> (Press release 8/2010 as well as links to the detailed decision and the introductory remarks, all in German)).

(Birgit Kessler)

Le Procureur général près la Cour fédérale de Justice de la République fédérale d'Allemagne clôt l'enquête relative aux frappes aériennes à Kunduz

En avril 2010, le Procureur général près la Cour fédérale de Justice de la République fédérale d'Allemagne (*Generalbundesanwalt*) a clôturé son enquête sur le colonel Klein, officier de la *Bundeswehr*, qui avait ordonné des frappes aériennes contre deux camions-citernes dérobés par les talibans près de Kunduz en septembre 2009. Le bilan exact des victimes n'est pas connu. Toutefois, l'attaque aérienne a non seulement tué des talibans, mais a également coûté la vie à des civils. Après examen des faits, le *Generalbundesanwalt* a conclu que le colonel Klein ne porte aucune responsabilité pénale.

À l'époque de la frappe aérienne, le *Generalbundesanwalt* a qualifié la situation de conflit armé non international. Par conséquent, le droit pénal international

s'appliquait, lequel est codifié dans le Code allemand des crimes contre le droit international (*Völkerstrafgesetzbuch*). Le *Generalbundesanwalt* a cependant récusé toute violation du droit pénal international, comme le crime de guerre de lancer une attaque délibérée en sachant que celle-ci causera des pertes excessives en vies humaines. Il a en effet argumenté que le colonel Klein ne savait pas que des civils se trouvaient à proximité des camions-citernes. Il avait par ailleurs tout mis en œuvre pour s'assurer qu'ils ne soient pas dans la zone d'attaque. Il ne se rendait par conséquent pas compte du fait que la frappe provoquerait la mort de civils.

Quant à d'éventuelles violations du droit pénal ordinaire, le *Generalbundesanwalt* a statué qu'en principe, cette branche du droit s'applique en complément du droit pénal international. Cependant, si un acte est permis en tant qu'acte de guerre au sens du droit international, la responsabilité au sens du droit pénal ordinaire n'entre pas en ligne de compte. Après avoir procédé à une interprétation approfondie du droit international des conflits armés, le *Generalbundesanwalt* a conclu que le colonel Klein avait agi en conformité avec le droit international, ce qui exclut toute violation du droit pénal ordinaire. Le colonel Klein n'était par ailleurs pas obligé de faire les sommations d'usage, étant donné qu'il lui était permis de supposer qu'aucun civil ne se trouvait dans la zone d'attaque.

Enfin, le *Generalbundesanwalt* a souligné que des infractions à des règlements internes, tels que les règles d'engagement, n'ont pas d'incidence sur l'évaluation juridique du droit international, étant donné que ces règles ne sont pas juridiquement contraignantes et qu'elles ne peuvent de ce fait restreindre l'application du droit international.

En plus du communiqué de presse paru en avril 2010, le *Generalbundesanwalt* a publié l'intégralité de la décision dans une version ouverte en octobre 2010. Le but de cette démarche consistait à informer le public de cette décision révolutionnaire de la manière la plus détaillée possible. Pour la première fois en Allemagne, cette affaire a en effet exigé l'application des codes des crimes contre le droit international. Elle a également permis une interprétation approfondie du droit international des conflits armés.

(<http://www.generalbundesanwalt.de/de/showpress.php?heftnr=360&newsid=360>
(Communiqué 8/2010 ainsi que des liens vers la décision circonstanciée et les remarques préliminaires, textes en allemand))

(Birgit Kessler)

Piracy trial held in Hamburg

On 22 September 2010, the first piracy trial in Germany since 1624 began at Hamburg's county court. Ten Somalis have been accused of piracy. On 5 April 2010 the ten Somalis allegedly attacked the *MS Taipan* located at approximately 560 miles east of the coast of Somalia.

After the crew of the *MS Taipan* had sent a signal to the EU Mission Atalanta, the pirates were captured by the Dutch warship *HNLMS Tromp*. The ten Somalis were first brought to Amsterdam in the Netherlands, but following a Dutch court order the pirates were extradited to Germany.

As the *MS Taipan* is registered in Germany and thus flies the German flag and the ship-owning company holds its seat in Hamburg, the case falls under German jurisdiction according to paragraph four of the German Code of Criminal Procedure (§ 4 *Strafprozessordnung, StGB*).

The ten Somalis are accused of extortion, kidnapping and attacking maritime traffic (*Erpresserischer Menschenraub in Tateinheit mit Angriff auf den Seeverkehr*, §§ 239 a, 316 c, 52 StGB).

At the onset of the trial, uncertainty remained as to the identity and the age of some of the accused. The defense filed a petition to discontinue the suit against the youngest of the accused, because he is said to be 13 years old, thus under the minimum age of criminal responsibility.

The bar and the public prosecution estimated that the accused is of the age of 14, although a medical estimate determined his age at 18. With the age of 14 the accused holds criminal responsibility according to German law.

On 17 January 2011 the counsel of the defense abandoned his motion to discontinue the suit.

For more information see:

<http://www.guardian.co.uk/world/2010/nov/22/somali-pirates-trial-hamburg>

<http://www.faz.net/s/RubDDBDABB9457A437BAA85A49C26FB23A0/Doc~E5F9326E16AF643ECB2A4F4811895E531~ATpl~Ecommon~Scontent.html> (text in German)

<http://www.abendblatt.de/hamburg/article1759742/Mutmasslicher-somalischer-Pirat-wollte-Asyl-beantragen.html> (text in German)

(Stephanie Kwasnitschka)

New French anti-piracy law adopted

On 5 January 2011, the French Senate passed a new law - Loi n° 2011-13 - concerning the fight against maritime piracy. To achieve the goal of a more effective and efficient campaign against piracy, the law enhances preventive and repressive measures.

For more information see: <http://www.senat.fr/dossier-legislatif/pjl08-607.html>,
full text:

http://www.legifrance.gouv.fr/affichTexte.do%3bjsessionid=D1828EA42C2FF81F27F0B15AA3C5594F.tpdjo08v_2?cidTexte=JORFTEXT000000713756&idSectionTA=LEGISCTA000023386322&dateTexte=20110110&categorieLien=id#LEGISCTA000023386322

(Stephanie Kwasnitschka)

NEW START treaty and Protocol in force

On 8 April 2010, the NEW START treaty (Strategic Arms Reduction Treaty), including its Protocol, which is an integral part thereof, was signed between US President Obama and Russian President Medvedev. The NEW START treaty follows the START I treaty - signed on 31 July 1991 by former US President George H.W. Bush and former President of the Soviet Union Mikhail Gorbachev - and the START II treaty - signed on 3 January 1993 by former US President George H.W. Bush and former Russian President Boris Yeltsin. In both the START I and II treaties, the parties agreed to the reduction of the Russian and American nuclear arsenals. Following this tradition, it was agreed in the NEW START treaty to further both nuclear arsenals. On 5 February 2011 the NEW START treaty entered into force with the exchange of the US and Russian ratification instruments.

For more information see:

<http://www.un.org/News/dh/pdf/english/2010/22122010.pdf>

<http://www.whitehouse.gov/blog/2010/04/08/new-start-treaty-and-protocol>

(Stephanie Kwasnitschka)

UN Security Council ends Iraq sanctions

On 15 December 2010, the UN Security Council decided to end the UN sanctions on Iraq stemming from the wars in 1991 and 2003. The Security Council returned control of mineral exports to Iraq's Government, ended the oil-for-food program and lifted restrictions on programs for the development of nuclear energy.

For more information see:

<http://www.un.org/News/dh/pdf/english/2010/15122010.pdf>

<http://www.un.org/News/Press/docs/2010/sc10118.doc.htm>

(Stephanie Kwasnitschka)

Residual Mechanism established to conclude the tasks of the ICTR and ICTY

On 22 December 2010, the UN Security Council set up a new body to finish the remaining tasks of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY). The Security Council called on the tribunals to conclude their work no later than 31 December 2014. The Mechanism will continue their jurisdiction, rights, obligations and essential functions, subject to provisions of UN Security Council Resolution 1966 (2010).

For more information see:

<http://www.un.org/News/dh/pdf/english/2010/22122010.pdf>

<http://www.un.org/News/Press/docs/2010/sc10141.doc.htm>

On 14 December 2010, the Security Council already extended the terms of several judges, working for the ICTY and ICTR, so they can complete the cases on which they are working.

(Stephanie Kwasnitschka)

Investigation into possible war crimes committed in the Korean Peninsula

On 7 December 2010, the Prosecutor of the International Criminal Court declared that his Office is looking into whether recent incidents in the Republic of Korea constitute war crimes. After receiving communications from Korean citizens, the Office of the Prosecutor started a preliminary examination into two incidents. These incidents are the shelling of Yeonpyeong Island on 23 November 2010 and the sinking of the Cheonan on 26 March 2010.

For more information see:

<http://www.un.org/News/dh/pdf/english/2010/07122010.pdf>

(Stephanie Kwasnitschka)

\$680 Million unblocked for compensation of victims of Iraq invasion

The Commission of Compensation of the United Nations (“CINU”), set up in April 1991, is tasked with studying compensation for the victims of the invasion and occupation of the Kuwait by the Iraq in 1990-1991. The CINU received 2.7 million complaints submitted by about one hundred national governments in the name of their citizens and corporations. These complaints asked for compensation totaling \$352.5 billion. The Commission continues to pay awarded allocations.

CINU regulations state that several categories of damages are recognizable, including damages caused to the environment and to natural resources, and allows victims, such as individuals, businesses, and governments to make compensation request. Six categories of compensation requests were established by the CINU Board of Directors: four for individuals, one for corporations, and one for governments and international organizations.

According to a UN press release of 27 January 2011 the CINU unblocked \$680 million, which will be distributed to nine successful claimants. That brings the compensation paid to a total amount of \$31.4 billion. Compensation funds were mostly financed by the sale of the Iraqi oil through the “Oil for Food” program that came to an end. Security Council Resolution 1483 provided that future compensation would be paid by withholding 5% of Iraqi oil recipes.

For more information on the CINU, see:

[http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5SSDM5/\\$File/irrc_851_Wooldridge_Olufemi.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5SSDM5/$File/irrc_851_Wooldridge_Olufemi.pdf)

Upcoming conferences, seminars, etc. / Annonces de conférences, séminaires, etc.

The Norwegian group of the *International Society for Military Law and the Law of War* organises a **seminar on Military Procurement and Ethics**, 2-4 March 2011. The themes will be roles and responsibilities for military lawyers, Ministry of Defense lawyers, and civilian outside counsel in:

- investigating equipment failures apparently caused by design defects, upgrade flaws, or other contractor-supervised activities.
- negotiating intellectual property rights, monitoring progress and status, and addressing non-compliance with contractual specifications, schedule, and price in cross-border acquisitions of major defence systems.
- investigating cyber-attacks and determining the appropriate/lawful response to cyber-attacks on a nation's military and commercial infrastructure.

A detailed program and invitation has been circulated separately.

Du 2 au 4 mars 2011, le **Groupe norvégien de la Société Internationale de Droit Militaire et de Droit de la Guerre** organisera un **séminaire sur les marchés publics de la Défense et l'éthique y afférente**. Les thèmes qui y seront abordés porteront sur le rôle et les responsabilités des juristes militaires, des juristes du Ministère de la Défense et des conseillers juridiques civils externes dans les domaines suivants :

- l'enquête sur les défaillances du matériel apparemment causées par des défauts de conception, des défauts de modernisation ou par d'autres activités placées sous le contrôle du contractant.
- la négociation des droits de propriété intellectuelle, le contrôle de l'évolution et du statut et le traitement des problèmes de non-respect des spécifications contractuelles, du calendrier et des prix dans le cadre d'acquisitions transfrontalières de grands systèmes de défense.
- l'enquête sur les cyber-attaques et la détermination des mesures appropriées/légales prises à l'encontre des cyber-attaques visant les infrastructures militaires et commerciales d'un pays.

Une invitation avec un programme détaillé a été envoyée séparément.

The **Military Prosecutor General's Office of the Republic of Hungary** and the **Hungarian Group of the International Society for Military Law and the Law of**

War (the Hungarian Society for Military Law and the Law of War) invite members to attend the **10th International Military Criminal Law Conference** from 8-10 September 2011 at the Hungarian Judicial Training Center in Budapest, Hungary. Registration is required. Hotel rooms are available at reduced rates. For more information, contact COL Laszlo VENCZL /Tel: (+36-1) 311-5888, Mobile: (+36) 30 9713 096, Fax: (+36-1) 354-5691, E-mail: venczl.laszlo@mku.hu.

Le **Bureau du Procureur Général Militaire de la République de Hongrie et le Groupe hongrois de la Société Internationale de Droit Militaire et de Droit de la Guerre (la Société hongroise de droit militaire et droit de la guerre)** invitent les membres à assister à la **10^{ème} Conférence internationale de droit pénal militaire** qui se tiendra du 8 au 10 septembre 2011 au Centre de formation judiciaire hongrois à Budapest, Hongrie. L'inscription est obligatoire. Des chambres d'hôtels sont disponibles à des tarifs réduits. Pour de plus amples renseignements, veuillez prendre contact avec le COL Laszlo VENCZL /Tel: (+36-1) 311-5888, Mobile: (+36) 30 9713 096, Fax: (+36-1) 354-5691, E-mail: venczl.laszlo@mku.hu.

Please note that the *International Society for Military Law and the Law of War* is currently organizing an **International Conference on Military Justice**, to be held in Rodos (Greece) from 28 September 2011 to 2 October 2011. Invitations containing detailed information and registration forms will be sent to the members of the Society at a later date.

Veuillez noter que la *Société Internationale de Droit Militaire et de Droit de la Guerre* organisera une **Conférence Internationale concernant la Justice Militaire**. Cette conférence se tiendra à Rodos (Grèce) du 28 septembre 2011 au 2 octobre 2011. Les invitations contenant de plus amples détails et les formulaires d'inscription seront envoyées aux membres de la Société à une date ultérieure.

The *International Institute of Labour and Social Relations* in Minsk is organizing its **6th International Law Competition "Youth for Peace"**. The competition will take place in Minsk from 17 to 21 May 2011. For more information, please visit the website www.mitso.by/olympic.

Publication of interest / Publication intéressante

André Dumoulin & Philippe Manigart (dir.), *Opinions publiques et politique européenne de sécurité et de défense commune : acteurs, positions, évolutions*, Coll. « Organisation internationale et relations internationales » N° 67, Bruylant, 2010, 538 pages, ISBN 978-2-8027-3030-9, 130 Euros.

Eric David & Cédric van Assche, *Code de droit international public*, 5^e édition à jour au 1^{er} décembre 2010, Bruylant, 2010, 1744 pages, ISBN 978-2-8027-3084-2, 47 Euros.

L'évolution et l'état actuel du droit international de la mer, Mélanges de droit de la mer offerts à Daniel Vignes, Bruylant, 2009, 1024 pages, ISBN 978-2-8027-2791-0, 120 Euros.

H.-D. Bosly & D. Vandermeersch, *Génocide, crimes contre l'humanité et crimes de guerre face à la justice. Les juridictions internationales et les tribunaux nationaux*, Bruylant, 2010, 250 pages, ISBN 978-2-8027-2918-1, 32 Euros.

Jean-Marc Sorel & Corneliu-Liviu Popescu (dir.), *La protection des personnes vulnérables en temps de conflit armé*, Collection Magnacarta - N° 2, Bruylant, 2010, 326 pages, ISBN 978-2-8027-2833-7, 40 Euros.

Alice Yotopoulos-Marangopoulos & Photini Pazartzis (ed.), *Le génocide revisité. Genocide Revisited*, Bruylant, 2010, 142 pages, ISBN 978-2-8027-3007-1, 30 Euros.

Nout van Woudenberg & Liesbeth Lijnzaad (eds.), *Protecting Cultural Property in Armed Conflict. An Insight into the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict*, Brill, 2010, 268 pages, HB, ISBN-13: 978 90 04 18377 3, 85 Euros (US\$ 121).

Omar Abdulle Alasow, *Violations of the Rules Applicable in Non-International Armed Conflicts and Their Possible Causes. The Case of Somalia*, Brill, 2010, 32+364 pages, HB, ISBN-13: 978 90 04 16475 8, 120 Euros (US\$ 192).

Cyril Laucci, *The Annotated Digest of the International Criminal Court 2008*, Brill, 2010, 16+794 pages, HB, ISBN-13: 978 90 04 19168 6, 230 Euros (US\$ 368).

Georghios M. Pikis, *The Rome Statute for the International Criminal Court. Analysis of the Statute, the Rules of Procedure and Evidence, the Regulations of the Court and Supplementary Instruments*, Brill, 2010, HB, 24+330 pages, ISBN-13: 978 90 04 18613 2, 125 Euros (US\$ 178).

Scott Leckie (ed.), *Returning Home: Housing and Property Restitution Rights for Refugees and Displaced Persons*, Brill, 2010, HB, 450 pages, ISBN-13: 978 15 71 05241 4, 133 Euros (US\$ 182).

Nidal Nabil Jurdi, *The International Criminal Court and National Courts. A Contentious Relationship*, Ashgate, February 2011, 332 pages, HB, ISBN: 978-1-4094-0916-8, £ 65.

Mashood Bader (ed), *International Human Rights Law. Six Decades after the UDHR and Beyond*, Ashgate, November 2010, 588 pages, HB, ISBN: 978-1-4094-0359-3, £ 75.

Roberto Bellelli (ed), *International Criminal Justice. Law and Practice from the Rome Statute to Its Review*, Ashgate, 2010, 706 pages, HB, ISBN: 978-1-4094-0267-1, £ 85.

Elizabeth Stubbins Bates et al., *Terrorism and International Law: Accountability, Remedies, and Reform. A Report of the IBA Task Force on Terrorism*, Oxford, February 2011, 304 pages, PB, ISBN: 978-0-19-958918-0, £ 55.

Karim Khan, Caroline Buisman & Chris Gosnell (eds), *Principles of Evidence in International Criminal Justice*, Oxford, 2010, HB, 880 pages, ISBN: 978-0-19-958892-3, £ 125

Tom Ruys, 'Armed Attack' and Article 51 of the UN Charter. *Evolutions in Customary Law and Practice*, Series: Cambridge Studies in International and Comparative Law (No. 74), Cambridge, Nov 2010, 616 pages, HB, ISBN: 9780521766647,

Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda. Justice without Lawyers*, Series: Cambridge Studies in Law and Society, Cambridge, 2010, 400 pages, HB, ISBN: 9780521193481, Maurice Kamto, *L'agression en droit international*, Pédone, 2011, 464 pages, PB, ISBN13: 978-2-233-00588-5, 40 Euros.

André Klip & Göran Sluiter (eds.), *Annotated Leading Cases of International Criminal Tribunals - volume 25. The International Criminal Tribunal for Rwanda 2006-2007*, Intersentia, 2010 PB, 970 pages, ISBN 978-90-5095-916-2, 185 Euros.

Jan Wouters et al. (eds.), *Accountability for Human Rights Violations by International Organisations*, Intersentia, 2010, 24+626 pages, HB, ISBN 978-90-5095-746-5, 120 Euros.

Volume 3 of the **NIMJ Reports from Guantanamo** is available at <http://www.wcl.american.edu/nimj/publications.cfm>.

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