



## NEWS FLASH N° 5

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**Special Call for Papers for *The Military Law and the Law of War Review***

**The Military Law and the Law of War Review**

*presents*

**Call for Papers**

**Role and Responsibilities of Legal Advisors**

**Military Operations in Libya**

The *Military Law and the Law of War Review* / *Revue de Droit Militaire et de Droit de la Guerre* is a journal specialised in matters of interest for both civilian and military legal advisors as well as legal scholars and academics. It is among the oldest publications at the international level in the areas of military/security law and the law of war. For decades, the *Review* has been an important forum of discussion for scholars and practitioners from all over the world.

The *Review* is produced by the *Belgian Centre for Military Law and the Law of War*, under the auspices of the *International Society for Military Law and the Law of War*, with the support of the Belgian Ministry of Defence. It is usually published once a year, in two-four separate issues. It features only peer-reviewed, original, and challenging articles, case notes, commentaries of the latest legal developments and book reviews. As a distinct trait, it accepts contributions in six languages: English, French, German, Spanish, Italian and Dutch.

On the occasion of the 50<sup>th</sup> Anniversary of its foundation, a dedicated issue of the *Review's* 2011 Volume will deal with **'The Role and Responsibilities of Legal Advisors in the Armed Forces: Evolution and Present Trends'**.

Another issue of the 2011 Volume will mostly concern the **current military operations in Libya**.

The Editorial Board invites practitioners and scholars to submit articles dealing with these topics by e-mail to: [soc-mil-law@scarlet.be](mailto:soc-mil-law@scarlet.be).

### **The Role and Responsibilities of Legal Advisors in the Armed Forces: Evolution and Present Trends**

Articles related to this topic should in principle be between 2500 and 6000 words long (footnotes included) and should be submitted by 15 July 2011 at the latest. The Editorial Board welcomes in particular contributions from current/former civilian/military legal advisors who have experience in this field. Contributions should focus on legal questions associated with the conduct of operations (taking *jus in bello* and international human rights law, as applicable, duly into account) and may embrace one or more of the strategic, operational, or tactical level perspectives.

The Editorial Board will select papers for publication in *The Military Law and the Law of War Review* by 31 August 2011.

Selected papers may also be circulated as background readings at the International Conference on Military Justice, to be held in Rhodes (Greece) from 28 September 2011 to 2 October 2011, organized by the *International Society for Military Law and the Law of War*. This conference will see the organization of separate special panel on 'The Role and Responsibilities of Legal Advisors in the Armed Forces'. Selected authors will receive an invitation to attend this conference, including the special panel, and may be approached to present their paper to the participants.

This initiative is intended to be the starting point for a continuing global dialogue on the same topic, under the auspices of the *International Society for Military Law and the Law of War*, with a view to promoting the rule of law worldwide. It is understood that this dialogue will also benefit from contributions addressing legal aspects of cooperation between armed forces and civilian government agencies as well as with private sector entities (such as contractors and non-governmental organizations).

### **Military Operations in Libya**

Articles discussing legal questions associated with the current military operations in Libya should be submitted by 15 September 2011. The Editorial Board welcomes brief contributions (about 3000 words – footnotes excluded) as well as larger contributions (about 6500 words – footnotes excluded) from practitioners and scholars. Focus areas may include – but are not limited to – questions regarding the interpretation and application of Chapter VII of the UN Charter (e.g. the measures carried in the framework of the 'No-Fly Zone *Plus*' and the embargo operations),

including in relation to the Responsibility to Protect (in the context of which recent UN Security Council Resolutions regarding Cote d'Ivoire may also be considered relevant); the manner in which Balkans/Rwanda Lessons Learned have been taken into account in the decision-making process concerning UN Security Council Resolutions 1970 and 1973; the conduct of operations; and the legal ramifications of the recognition of and cooperation with the Libyan insurgency.

The Editorial Board will select papers for publication in *The Military Law and the Law of War Review* by 1 November 2011.

The Editorial Board may be contacted at: [soc-mil-law@scarlet.be](mailto:soc-mil-law@scarlet.be).

*(Editorial Board of The Military Law and the Law of War Review)*

**Joint meeting of the *International Society for Military Law and the Law of War* and the *China Society for Military Law*, hosted by the *Academy of Military Science, PLA, Beijing***

On 2 and 3 March 2011 a delegation from the *International Society for Military Law and the Law of War*, headed by its Vice-President and Director for Seminars for Legal Advisors to the Armed Forces, Brigadier General Jan Peter Spijk, gathered in Beijing with a delegation from the *China Society for Military Law*, the Chinese Group within the *International Society for Military Law and the Law of War*. The Chinese delegation was headed by Lieutenant General Liu Jixian, Vice-President of the *Academy of Military Science, PLA*, and Chairman of the *China Society for Military Law*. The delegations discussed the possibility of jointly organising an event on *the international law of peace operations*.



## **Developments**

### **ICTY convicts two former Croatian generals over atrocities**

On 15 April 2011, the International Criminal Tribunal for the former Yugoslavia (ICTY) trial chamber found Mr. Ante Gotovina and Mr. Mladen Markac guilty of various crimes against humanity, including murder, persecutions, deportation and plunder carried out against ethnic Serb civilians during the military offensive known as *Operation Storm*, in the Krajina region of Croatia in mid-1995. Both were acquitted of charges of inhumane acts (forcible transfer). Operation Storm began on 4 August 1995. Military forces and special police under the control or influence of Mr. Gotovina and Mr. Markac shelled a series of towns and villages, murdered several elderly residents of another village and burned or looted property belonging to ethnic Serb civilians. The ICTY held that the men created a climate of impunity and were aware of the involvement of subordinates in the commission of these crimes, but did nothing to stop them. Mr. Gotovina was sentenced to 24 years in prison. Mr. Markac received a jail sentence of 18 years.

Mr. Ivan Cermak was acquitted of all charges, including murder, persecutions, deportation and the wanton destruction of cities, towns or villages. The judges found that Mr. Cermak did not have effective control over army units outside of his own subordinates at the Knin garrison, and there was no reliable evidence that those subordinates committed crimes.

For more information see *inter alia* UN press release of 15 April 2011.

### **First Congolese trials for conflict-related sexual violence**

On 9 March 2011, the Military Tribunal of South Kivu in Kalehe in eastern Democratic Republic of the Congo (DRC) has handed down guilty verdicts against 11 FARDC army officers accused of rape of 24 women, pillaging, destruction of schools, abduction of children and other violations of physical integrity in Katasomwa in the South Kivu province, from 26 to 29 September 2010. They include the commander of the 68th Battalion based in Katasomwa, Lieutenant-Colonel Balumisa aka Dix mille, who was sentenced to life imprisonment, as well as the second in command, Major Elia, who also received a life sentence.

The trial was organized with logistical and material support from the UN *Organization Stabilization Mission in the DRC* (MONUSCO), the UN *Joint Human Rights Office*, the *Canadian International Development Agency* (CIDA), the UN *Development Programme* (UNDP), and *Avocats Sans Frontières* (ASF). Mrs. Margot Wallström, the *Special Representative of the UN Secretary-General on Sexual Violence in Conflict*, said in a

statement that *"this sends a strong signal to all perpetrators of acts of sexual violence that no military commander is beyond the law, including members of a national army"*.

In a similar case, a mobile military tribunal in Baraka in Eastern DRC has handed down guilty verdicts on 21 February 2011 against a high-ranking FARDC commander, three army officers serving under the commander and five soldiers for rape and other human rights abuses in the town of Fizi during the night of 1 to 2 January 2011. This marked the first time that a senior official and members of the army were arrested, tried and sentenced for conflict-related sexual violence in the DRC.

MONUSCO, along with the *American Bar Association*, the *Open Society Initiative*, and local non-governmental organizations, assisted in the Baraka trial. Ms. Wallström stated: *"Not only did the Congolese authorities react swiftly to the Fizi rapes in January and apprehended a number of the alleged perpetrators, but by all accounts the legal process has been fair and efficient"*.

UN human rights officials are also providing technical and logistical support to military justice authorities in the DRC in the rape trial of General Jérôme Kakwavu. General Kakwavu, the highest ranking national army officer to be prosecuted for such crimes, is currently in detention in Kinshasa. Before his integration into the FARDC, he led the Congolese armed group UDC/FAPC. He is charged with having raped two females – one of whom was aged just 13.

For more information see *inter alia* UN press releases of 21 February 2011, 23 February 2011, 10 March 2011, and <http://monusco.unmissions.org/Default.aspx?tabid=4640&ctl=Details&mid=5262&ItemID=12381>>news.

### **ICJ has no jurisdiction to decide Georgian claim against the Russian Federation**

On 1 April 2011 the International Court of Justice (ICJ) ruled that it cannot consider a claim by Georgia that the Russian Federation breached the Convention on the Elimination of All Forms of Racial Discrimination (CERD). Georgia had contended that the Russian Federation had engaged in a systematic policy of ethnic discrimination against ethnic Georgians and other groups living in Abkhazia and South Ossetia from the early 1990s until fighting broke out there in 2008. The two countries had not first tried to resolve their dispute through negotiations. The ICJ said the convention requires the parties to a dispute to first have either attempted negotiations or resorted to the special procedures outlined in the pact, and that the lodging of protests or counter-claims by the two countries was not sufficient.

For the ICJ's decision see <http://www.icj-cij.org/docket/files/140/16398.pdf?PHPSESSID=99108e83dba6c282fd1420cd27da8719>.

### **Goldstone reconsiders the Goldstone Report on Israel and war crimes**

In an opinion published in the Washington Post on 1 April 2011 Justice Richard Goldstone reconsiders the report of the fact-finding mission appointed by the U.N. Human Rights Council. The opinion is available at [http://www.washingtonpost.com/opinions/reconsidering-the-goldstone-report-on-israel-and-war-crimes/2011/04/01/AFg111JC\\_story.html](http://www.washingtonpost.com/opinions/reconsidering-the-goldstone-report-on-israel-and-war-crimes/2011/04/01/AFg111JC_story.html).

### **ICTY convicts former Serbian police official over atrocities in Kosovo**

On 23 February 2011, ICTY trial chamber II convicted Vlastimir Đorđević, the former Assistant Minister of the Serbian Ministry of Internal Affairs and Chief of its Public Security Department, of crimes against humanity and war crimes. He was found guilty of participating in a joint criminal exercise in 1999, whose aim was to change the ethnic balance of Kosovo to ensure Serbian dominance in the territory. This objective was pursued through a widespread campaign of terror and violence against ethnic Albanians, which included deportations, murders, forcible transfers and persecutions. Mr. Đorđević was sentenced to 27 years imprisonment.

For more information see *inter alia* UN press release of 23 February 2011.

### **The situation in Libya**

Following the eruption of protests against the Qadhafi regime in Libya and the violent repression of peaceful demonstrators by the Libyan authorities, the UN Security Council, acting under Chapter VII of the UN Charter, unanimously adopted Resolution 1970 of 26 February 2011. This resolution demanded an immediate end to the violence and called for steps to fulfil the legitimate demands of the population. The resolution also referred the situation in Libya since 15 February 2011 to the Prosecutor of the International Criminal Court (ICC). Even though Libya is not a party to the Rome Statute of the ICC, this decision provides the ICC with jurisdiction. Furthermore, the resolution imposed an arms embargo, travel ban and assets freeze on the Qadhafi regime.

In response to the request from the UN Security Council to probe the violent crackdown on protesters, the Prosecutor of the ICC said on 3 March 2011 that he is investigating alleged crimes against humanity committed in Libya, including by Mr. Muammar Al-Qadhafi and members of his inner circle. The Prosecutor said the probe will look into several incidents that have occurred since 15 February 2011 in



various towns and cities across Libya. The Office has identified some individuals with *de facto* or formal authority on the security forces who allegedly committed the crimes, such as Mr. Qadhafi and his inner circle, including some of his sons. The Prosecutor also noted that there are people with formal authority who should pay attention to the crimes committed by their people because if they are not preventing, stopping and punishing these crimes, they could be responsible. The Office of the Prosecutor will present its evidence to the ICC's judges, who will then decide whether or not to issue arrest warrants.

On 25 February 2011, the UN Human Rights Council decided to dispatch an independent international commission of inquiry to investigate all alleged violations of international human rights law in Libya, to establish the facts and circumstances of such violations and of the crimes perpetrated, and, where possible identify those responsible to make recommendations, in particular, on accountability measures.

Following a UN Human Rights Council recommendation the UN General Assembly suspended Libya on 1 March 2011 from the UN Human Rights Council for gross and systematic human rights violations because of Mr. Qadhafi's violent repression of peaceful protesters.

On 12 March 2011, the Council of the League of Arab States called on the UN Security Council for the imposition of a no-fly zone on Libyan military aviation, and to establish safe areas in places exposed to shelling as a precautionary measure that allows the protection of the Libyan people and foreign nationals residing in Libya.

On 17 March 2011, the UN Security Council, acting under Chapter VII of the UN Charter, adopted Resolution 1973. In this resolution the UN Security Council deplores the failure of the Libyan authorities to comply with Resolution 1970. Resolution 1973 authorises member states that have notified the Secretary-General, acting nationally or through regional organisations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures to protect civilians and civilian populated areas under threat of attack in Libya, while excluding a foreign occupation force of any form on any part of Libyan territory. Resolution 1973 also establishes a ban on all flights in the airspace of Libya in order to help protect civilians. This ban does not apply to specified humanitarian flights and to authorised measures to enforce the compliance with the ban on flights. With Resolution 1973 the Security Council also decided that all states shall deny permission to any aircraft registered in Libya or owned or operated by Libyan nationals or companies to take off from, land in or overfly their territory unless the particular flight has been approved in advance by a specified committee, or in the case of an emergency landing. Resolution 1973 also calls upon all member states, in particular states of the region, acting nationally or through regional organisations or arrangements, in order to ensure strict implementation of the arms embargo, to

inspect in their territory, including seaports and airports, and on the high seas, vessels and aircraft bound to or from Libya, if the State concerned has information that provides reasonable grounds to believe that the cargo contains items the supply, sale, transfer or export of which is prohibited by the UN Security Council, including the provision of armed mercenary personnel. It calls upon all flag states of such vessels and aircraft to cooperate with such inspections and authorises member states to use all measures commensurate to the specific circumstances to carry out such inspections. Moreover, Resolution 1973 includes more measures of travel ban and assets freeze. Finally, the Security Council established a panel of experts to monitor the implementation of sanctions against the Qadhafi regime.

The Office of the UN High Commissioner for Human Rights (OHCHR) welcomed Resolution 1973, terming it an important manifestation of the international community's commitment to the principle of responsibility to protect civilians.

For more information see *inter alia* UN press release of 1 March 2011, 3 March 2011, 17 March 2011, 18 March 2011, <http://www.icc-cpi.int/NR/rdonlyres/2B57BBA2-07D9-4C35-B45E-EED275080E87/0/N1124558.pdf>, <http://www.un.org/News/Press/docs/2011/sc10200.doc.htm#Resolution> and [http://www.foreignpolicy.com/files/fp\\_uploaded\\_documents/110225\\_Ad%20adopted%20resolution.pdf](http://www.foreignpolicy.com/files/fp_uploaded_documents/110225_Ad%20adopted%20resolution.pdf). For more information on *United Protector*, the current NATO operation in Libya, see e.g. [http://www.nato.int/cps/en/natolive/topics\\_71652.htm](http://www.nato.int/cps/en/natolive/topics_71652.htm).

### **UN Security Council will consider plans for specialised Somali courts to try pirates**

On 11 April 2011, the UN Security Council adopted Resolution 1976, which contains the decision to urgently consider the establishment of specialized Somali courts to try suspected pirates both in Somalia and in the region, including an extraterritorial Somali specialized anti-piracy court, as referred to in the recommendations contained in the report of the *Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia* Mr. Jack Lang (Annex to document S/2011/30), consistent with applicable human rights law. The UN Security Council requests the UN Secretary-General to report within two months on the modalities of such prosecution mechanisms, including on the participation of international personnel and on other international support and assistance, taking into account the work of the *Contact Group on Piracy off the Coast of Somalia* and in consultation with concerned regional states.

### **Somali pirate sentenced by U.S. Court**

In April 2009, the U.S. Navy ended a hostage standoff in the Indian Ocean and freed the captain of the U.S.-flagged cargo ship *Maersk Alabama* by killing three Somali



pirates and taking Mr. Abduwali Abdukhadir Muse into custody. In February 2011 U.S. District Judge Loretta Preska sentenced Mr. Muse to 33 years and 9 months in prison after he pled guilty to hostage-taking, kidnapping, hijacking, and conspiracy in the hijackings of the *Maersk Alabama*, as well as two other ships off Somalia's coast.

For more information see e.g. <http://online.wsj.com/article/SB10001424052748703373404576148393224867726.html> and [http://topics.nytimes.com/top/reference/timestopics/people/m/abduwali\\_abdukhadir\\_muse/index.html](http://topics.nytimes.com/top/reference/timestopics/people/m/abduwali_abdukhadir_muse/index.html).

### **ICC commits suspects in the 2007 attack on the AMIS to trial**

The Pre-Trial Chamber of the ICC has found “*substantial grounds*” to believe that rebel leaders Saleh Jerbo and Abdallah Banda are criminally responsible as co-perpetrators for three war crimes allegedly committed during the 2007 attack on the Haskanita camp in South Darfur in Sudan. This attack resulted in the death of 12 peacekeepers and the wounding of 8 others serving with the *African Union Mission in Sudan* (AMIS) – a predecessor to the joint UN-African Union peacekeeping mission UNAMID. The attack was allegedly carried out by the troops belonging to the *Sudanese Liberation Army-Unity* (SLA-Unity), under the command of Jerbo, jointly with splinter forces of the rebel *Justice and Equality Movement* (JEM), under the command of Banda.

For more information see *inter alia* UN press release of 8 March 2011.

(*Alfons Vanheusden*)

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

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 **10<sup>th</sup> 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](mailto: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<sup>ème</sup> **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/](mailto: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 Rhodes (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.

Veillez 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.

(Alfons Vanheusden)

The **Military Justice Summer Program** of the *National Institute of Military Justice* will take place from 19 to 24 June 2011 at *American University Washington College of Law in Washington, DC*. It is open for students and practitioners and they can register now on line. Link to the program's website: <http://www.wcl.american.edu/nimj/academy.cfm>. The *Military Justice Summer Program* offers a broad range of seminars on international and domestic military law. The program engages law students and practitioners from around the world in intensive training and discussion over a one-week period. The program focuses on important and developing issues within military law, including a number of sessions focused on national security law. Participants learn from expert practitioners from the U.S. military, government agencies, and leading international human rights non-profit organizations. Several sessions will be led by leading academics in the field of military law. Students can earn 1 or 2 credits. Site visits, guest lecturers, and other activities provide participants with additional learning and networking capabilities. The program includes site visits to the *Inter-American Commission on Human Rights*, the *Court of Appeals for the Armed Forces*, and *United States District Court for the District of Columbia*.

(National Institute of Military Justice, US)

## **Helmut James von Moltke Prize**

The German Group of the *International Society for Military Law and the Law of War* (The *German Society for Military Law and International Humanitarian Law*) will offer 1,500 euros in 2011 to award the Helmut James von Moltke Prize for legal contributions to aspects of security policy, written in English or German.

The jury (consisting of Dr. Dieter Fleck, Honorary President of the *International Society for Military Law and the Law of War*; Professor Dr. Heike Krieger, *Freie Universität Berlin*; Dr. Dieter Weingärtner, Federal Ministry of Defence; and Professor Dr. Joachim Wielant, *Hochschule für Verwaltungswissenschaften Speyer*) will decide in consideration of the relevance, actuality, originality, accuracy and convincing power of each contribution.

Manuscripts, which should be completed after 1 January 2010, may be submitted in five copies until 31 August 2011 to Dr. Dieter Weingärtner, Fontainengraben 150, D-53123 Bonn.

(Ulrike Froissart)

## **Publications of interest / Publications intéressantes**

The *Military Justice Gazette* No. 116, published by the *National Institute of Military Justice* is available at <http://www.wcl.american.edu/nimj/gazette.cfm>.

Marco Sassòli, Antoine A. Bouvier & Anne Quintin (ed. ICRC), *How Does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law*, Third edition, 3 volumes, 1 CD. To order a copy: [www.icrc.org/eng/shop](http://www.icrc.org/eng/shop).

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