

**Report of the IXth Seminar for Legal Advisors of the Armed Forces of the International Society for Military Law and the Law of War**

From 9 to 13 April 2013 the 1 (German/Netherlands) Corps hosted the *Society's* IXth Seminar for Legal Advisors of the Armed Forces at the Prince Claus Barracks in Münster, Germany. Some 99 participants from 34 different countries and international organisations came together to discuss 'Contemporary Challenges for Legal Advisers in International Military Operations', the central theme of the Seminar.

The Seminar was officially opened on Tuesday 9 April 2013 by a welcome reception hosted by Major General M. van der Laan, Deputy Commander of the 1 (German/Netherlands) Corps. Several office holders of the *Society*, including the President (Brigadier General (ret.) Jan Peter Spijk) and one Vice-President (Brigadier General Dimitrios Zafeiropoulos), attended the opening ceremony. The Director of the Seminar was Colonel Ben Klappe, who was assisted by the Deputy Director of the Seminar, Mrs. Ulrike Froissart.

In his keynote speech the next day, Lieutenant General A.J.H. van Loon, Commander of the Corps, provided useful advice on military cooperation with different national and international actors backed by examples drawn from his own experience. This was followed by a presentation and update of the *Society's* Research Project on International Law in Peace Operations by Mr. Alfons Vanheusden, the Assistant Secretary General of the *Society*. The morning concluded with interesting clarifications of the UK's current doctrine and the ICRC's position on detention in peace operations. Firstly, based on the recommendations from the Baha Moussa Public Inquiry Report, the UK reformed its detention policy into a system of common minimum standards for all captured persons, regardless of their status or the qualification of the conflict. Emphasis is put on the need for prior planning, clarity of command and staff responsibilities and equivalency as a base level, providing soldiers with some basic reflexes concerning detention. Further, the ICRC's contribution highlighted some of the legal issues arising from detention operations in non-international armed conflict, including the confusion around its legal basis, procedural safeguards for internment, the conditions and treatment in detention and the impact of the principle of non-refoulement on transfer of detainees.

The afternoon presentations on 'remote piloted aerial vehicles' gave rise to many interesting questions and debate from the audience. A useful oversight of the main lines of critique launched against drones was provided by Air Commodore Frans Osinga, Professor Military Operational Sciences at the Dutch National Defense College, together with some remarks balancing these critiques, e.g. the potential of precision strikes to lead to more humane warfare. His colleague Professor Terry D. Gill subsequently raised some questions and provided very informative answers on the *ius ad bellum* and *ius in bello* issues relative to remote piloted aerial vehicles. The legal and operational questions raised by the use of this kind of new technologies were debated further on the basis of particular case studies, for which the participants were divided into smaller discussion groups. The conclusions from the different groups provided useful new insights on accountability and the legal framework governing the use of remote piloted aerial vehicles.

The morning of Thursday 11 April 2013 focused on practical issues for legal advisers in military operations. Lieutenant Colonel Jean Michel Cambron, Legal Advisor, Canadian Joint Operations Command, Department of National Defence Canada, started with an overview of the legal implications of Special Operations. This was followed by a comprehensive presentation about the role of the legal adviser in the targeting process given by Lieutenant Colonel Christian De Cock, Chief Operational Law, Ministry of Defence Belgium. Afterwards, the different challenges faced by legal advisers during special operations and in the targeting process, as addressed by the morning presentations, were explored more fully by participants in the smaller discussion groups.

In the afternoon, Colonel Ben Klappe, former Chief of Staff of the NATO Rule of Law Field Support Mission, shared insights from his experience with the rule of law in Afghanistan. Afterwards, Mr. Pascal Limpens, Legal Adviser, Joint Forces Command, Brunssum, the Netherlands, offered an informative presentation on recent developments in the settlement of claims for damages caused by armed forces in international operations, with a particular focus on NATO operations. Again the presentations, questions of the audience and discussions in the smaller groups stimulated an interesting panel reflection on these themes.

On Friday 12 April of 2013, Captain (Italian Navy) Dr. Fabrizio Ratto-Vaquer introduced the participants to the topic of the morning session 'Maritime operations and Rules of Engagement'. An example of a maritime ROE was given for those participants not so familiar with the topic. It was explained that the peculiar characteristics of maritime peace operations deserves a separated analysis due to the overlap of several legal provisions. Relevant legal documents for maritime operations were said to be the UN Charter, UN Security Council Resolutions, relevant UN conventions as well as SOFAs. Moreover, attention has to be paid to the particular character of maritime law as reflected in the United Nations Convention on the Law of the Sea (UNCLOS). Indeed the division of maritime space and contiguous zones is not clear-cut in every case.

Next, Mr. Rolf Einar Fife of the Norwegian Ministry of Foreign Affairs offered an overview of the legal framework as well as current and future challenges at sea. In the past, international relations were based on the question of authority or power. States used the gunshot rule, which means that the authority of a state was based on the territory under its control. This authority could be translated into military power. The Law of the Sea is based on a strategic compromise between the sovereignty of the coastal state and the freedom of the High Seas. With regard to its negotiation, UNCLOS was the result of a third attempt to codify maritime law, 40 years after the first one. In the context of military operations one can only board and seize a vessel if it sails under his national flag, with consent or with a UN Security Council Resolution. This leads to the question of what kind of consent is useful or sufficient: the captain's consent or the government's? The definition of consent requires careful consideration and needs to be adapted to the particular situation of the case. On the question of the use of force, the judgment of the International Tribunal in Hamburg in the Saiga Case (1999) clarifies that the use of force must be avoided if possible. When unavoidable, the use of force should not go beyond what is necessary. It was also noted that maritime law takes concepts of international humanitarian law into consideration. Finally, it was remarked that when peace and security are at stake, the Oil Platforms judgment provides useful information on the burden of proof and the issue of securing evidence.

Commander Kenneth Buhl of Denmark subsequently discussed the legal battle for the Arctic. In case of the Arctic, climate change has created new possibilities, among which access to the resources at land and sea, a shorter route between the Pacific and the Atlantic and even tourism. On the other hand, it also created new challenges for the fragile environment and safety at sea. Due to their geographical position as coastal states of the Arctic, there are legal interests at stake for the Arctic five (Canada, Denmark, Norway, Russian Federation and the US). Other states, such as maritime nations, can nevertheless be concerned by the situation in the Arctic as well and eventually have access to the resources available. Several legal disputes arising in the Arctic, amongst which the Lomonosov Ridge (Denmark-Russia) and the continental shelf delineation (USA-Canada), put pressure for the adoption of new conventions to cover the Arctic environment. Although the US has not ratified UNCLOS, it considers itself bound by the rules on continental shelf delineation, which it accepts as constituting customary international law. Further, the constructive ambiguity of UNCLOS was discussed, as the treaty was a compromise between nations, which led to different interpretations by states. When the five coastal states were united to solve the Arctic 'problem' themselves, the ILULISSAT Declaration created a new legal framework. It states that no new legislation is needed and that UNCLOS is applicable to the Arctic. Mr. Buhl ended by concluding that the Arctic states demonstrated their will to avoid conflict and settle their differences peacefully through various agreements, both multilateral and bilateral. Hence, although law is not the solution to all problems, it plays a role in achieving goals of national interest.

The afternoon session looked at the current status of the implementation of UN Security Council concepts, by first focusing on UN Security Council Resolutions on sexual violence and the protection of children and women. The different Resolutions in this areas aim to enhance women's leadership in peace building and conflict prevention as well as to prevent and respond to conflict-related sexual violence. The presentation did not only focus on relevant UN Security Council Resolutions, but also looked at the impact of the UN Secretary-General's Bulletin on sexual abuse by peacekeepers and the measures taken to strengthen participation of women in UN peacekeeping operations.

Lieutenant Colonel Richard Brennan of the Irish Defence Forces subsequently elaborated on the impact of the Responsibility to Protect (R2P) doctrine on the concept of safe areas. After an explanation of the general concept, origins and evolution of the Responsibility to Protect, it was pointed out that the concept can sometimes be considered a Trojan horse. Indeed, a quote of Gareth Evans reflects this opinion: *'... it is a fundamental mistake to maintain, as some still do, that R2P is no more than old humanitarian intervention wine in a new bottle'* (Gareth Evans on 'Responsibility to Protect after Libya'; the World Today, Vol 68, Number 8/9). Further, the conflict in Libya exposed some of the issues tied to the concept. First of all, by providing a mandate to protect civilians, the UN Security Council challenged the traditional definition of a military objective. Secondly, the use of the R2P concept created a problem for certain states, who considered the intervention to be a hidden regime change. Thirdly, the question can be asked against whom the civilians needed protection: rebel groups or government forces? Finally, it was concluded that the concept of Responsibility to Protect consists of two layers: a layer reflecting the international law concept and one being the translation into operational advice by military legal advisers.

Lastly, on Saturday 13 April 2013, the participants enjoyed an excursion to the historic city of Münster. The excursion started in the historical City Hall of Münster whereby Dr. Jörg Twenhöven, President of the Regional Section of the German Red Cross, Lord Mayor (ret.) of Münster and Governor (ret.) of Westphalia, gave a comprehensive introduction about the characteristics and the history of the city. In the City Hall, the participants had the chance to visit the 'Hall of Peace'. As this was the site of the Peace of Westphalia of 1648, the participants were well-placed to appreciate the historical value of the location. Afterwards, a guided tour of the city of Münster was provided. The participants visited the St. Lamberti's Church and heard the gruesome history about the three cages hanging up on the spire of this church. Afterwards they went to the Münster Cathedral (St.-Paulus-Dom) in which they saw the famous astronomical clock.

*(Marika Lefevre, Laureen Van Assche and Adélaïde Kanyange)*