



## NEWS FLASH N° 11

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### Publications of interest / Publications intéressantes

Chile EBOE-OSUJI, *International Law and Sexual Violence in Armed Conflicts*, Martinus Nijhoff, 2012, 354 pp., ISBN: 9789004202627, € 130/ \$ 178 (HB), <http://www.brill.com/international-law-and-sexual-violence-armed-conflicts>

James PATTISON, *Humanitarian Intervention and the Responsibility To Protect, Who Should Intervene?*, Oxford University Press, 2012, 304 pp, ISBN: 9780199656622, £ 24.99 (PB), <http://ukcatalogue.oup.com/product/academic/law/9780199656622.do#.UFxEvLLiZhc>

Christine EVANS, *The Right to Reparation in International Law for Victims of Armed Conflict*, Cambridge, 2012, 304 pp., ISBN: 9781107019973, £ 60.00 (HB), [http://www.cambridge.org/be/knowledge/isbn/item6693125/The-Right-to-Reparation-in-International-Law-for-Victims-of-Armed-Conflict/?site\\_locale=nl\\_BE](http://www.cambridge.org/be/knowledge/isbn/item6693125/The-Right-to-Reparation-in-International-Law-for-Victims-of-Armed-Conflict/?site_locale=nl_BE)

Kjetil M. LARSEN, *The Human Rights Treaty Obligations of Peacekeepers*, Cambridge, 2012, 508 pp., ISBN: 9781107017078, £ 75.00 (HB), [http://www.cambridge.org/be/knowledge/isbn/item6687762/The-Human-Rights-Treaty-Obligations-of-Peacekeepers/?site\\_locale=nl\\_BE](http://www.cambridge.org/be/knowledge/isbn/item6687762/The-Human-Rights-Treaty-Obligations-of-Peacekeepers/?site_locale=nl_BE)

Paolo TRIPODI & Jessica WOLFENDALE (eds.), *New Wars and New Soldiers, Military Ethics in the Contemporary World*, Ashgate, 2012, 296 pp., ISBN: 9781409453475, £19.95 (PB), [http://ashgate.com/default.aspx?page=637&calctitle=1&pageSubject=502&pagecount=1&title\\_id=9440&edition\\_id=23680](http://ashgate.com/default.aspx?page=637&calctitle=1&pageSubject=502&pagecount=1&title_id=9440&edition_id=23680)

(Adélaïde Kanyange)

**Call for papers for the Third Annual International Humanitarian Law Student Writing Competition**

**American University Washington College of Law Center for Human Rights and Humanitarian Law (Center) and the American Society of International Law's Lieber Society on the Law of Armed Conflict (ASIL)** are pleased to announce the Third Annual International Humanitarian Law Student Writing Competition.

The Competition seeks submissions of academic papers on the topic of international humanitarian law (IHL) from students currently enrolled in a law degree program in the United States or abroad. The purpose of the Competition is to enhance scholarship and deepen understanding among students in this important area of international law. The winning authors will be flown to Washington, DC to present their papers at a conference at American University Washington College of Law focused on emerging issues in IHL with a panel of expert professors and practitioners. In addition, winners will receive a complimentary registration to the ASIL 2013 Annual Meeting in Washington, DC on April 3-6, 2013, and a one-year ASIL student membership. Deadline for submissions is: 31 January 2013.

For more information see: [http://www.wcl.american.edu/humright/center/student\\_ihl\\_writing\\_competition.cfm](http://www.wcl.american.edu/humright/center/student_ihl_writing_competition.cfm)

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

**T.M.C. Asser Instituut**, with the financial support of the Dutch Ministry of Security and Justice, will soon launch the International Crimes Database (ICD), a comprehensive database of international crimes adjudicated by national, as well as international and internationalized courts. The ICD is based on the earlier project DomCLIC, the Domestic Case Law on International Criminal Law Database, which can be accessed temporarily via [www.domclic.nl](http://www.domclic.nl) or [www.domclic.org](http://www.domclic.org). The DomCLIC/ICD project has already received expressions of support from several institutions.

In addition to case law on international crimes, the website will incorporate general background information about international crimes, academic as well as news articles, working papers, a discussion forum, streaming and video presentations and a social media platform to facilitate and stimulate interaction by our various users. The ICD will provide access to a range of information not just for lawyers and judges

but also for students, academics, families and communities of victims of crimes, and others.

For more information or to make suggestions for new additions to the database, provide information regarding important cases from any jurisdiction, and particularly original court documents (translated into English), an e-mail should be sent to the editors: [editors@domclic.nl](mailto:editors@domclic.nl).

**Stanford University and the Forum for International Criminal and Humanitarian Law (FICHL)** are co-organizing an international expert seminar on 'The Self-Interest of Armed Forces in Accountability for their Members for Core International Crimes.' The seminar will take place on 27 November 2012 at Stanford. While shedding light on this novel topic from different angles, the seminar will draw up a 'Stanford List of Military Self-Interests in Accountability' to aid further professionalization of armed forces. Among the experts in the programme are George P. Shultz, Richard J. Goldstone, Richard Saller, William K. Lietzau, Bruce Houlder, Agus Widjojo, David Cohen, Arne Willy Dahl, René Provost, Melvin Christopher Jenks, and Elizabeth L. Hillman. Registration deadline: 15 November 2012.

For more information see <http://www.ficHL.org/activities/the-self-interest-of-armed-forces-in-accountability-for-their-members-for-core-international-crimes/>

## **Developments / Développements**

### **Referral of Somali pirate to the Criminal Court of Brussels**

On 11 September 2012, the Belgian *Chambre du Conseil* of Bruges decided to refer the case of the Somali pirate Hassan O. to the Criminal Court of Brussels. The indictment concerns his involvement in the hijacking of the Belgian vessel the Pompeï and the taking hostage of its crew mid April 2009. It is the second time Belgium prosecutes a pirate for acts of piracy committed off the Somali coast, the first pirate being captured by the Belgian warship Louise-Marie and sentenced to ten years of imprisonment by a Belgian court.

The extraterritorial jurisdiction of the Criminal Court of Brussels is based on several international and domestic sources, introducing the fiction of the 'law of the flag'. The Belgian anti-piracy laws of 2009, providing Belgian courts with jurisdiction for offences committed against a Belgian vessel as well as in cases where the suspect of piracy has been captured by members of the Belgian armed forces, enable Belgium to repress piracy. The UN Security Council has indeed on several occasions reiterated

the need for all States to incorporate into domestic law the provisions on the repression of piracy contained in the United Nations Convention on the Law of the Sea (art 58(2) and 100-110 UNCLOS). This has encouraged several states to engage in a process of legislative reform to adapt their substantive criminal law to combat piracy and to establish (quasi-)universal jurisdiction to prosecute piracy suspects by incorporating the international law on the repression of maritime piracy into domestic law.

Although several legal bases allow States to exercise universal jurisdiction over crimes of piracy, most individuals suspected or found guilty of piracy have been transferred to the judicial authorities of Somalia itself or countries in the region of Somalia, e.g. Kenya, Yemen, the Seychelles and the Maldives. Referring to UNSC Resolution 1851 on Somalia, the explanatory memoranda of the Belgian Anti-Piracy laws emphasize the exceptional and complementary character of a Belgian prosecution of pirates. In the case of Hassan O. it is considered that Belgian interests are at stake, as the Pompeï sails under the Belgian flag.

The side stone dumping vessel and its crew were hijacked by Somali pirates mid April 2009, only to be released 71 days later in exchange for a ransom of several million euro. Hassan O., the Somali man suspected of piracy, had been arrested in the Seychelles for illegally entering the country, but was linked to the Pompeï case after a cross-check of his fingerprints against INTERPOL's maritime piracy and fingerprints databases. Answering a request of the Belgian judicial authorities, the Seychelles agreed to extradite the man to Belgium, to be tried for piracy in Brussels.

For more information see *inter alia* <http://www.interpol.int/News-and-media/News-media-releases/2012/N20120525> and the Report of the Legal Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/206/21/PDF/N1120621.pdf?OpenElement>.

*(Laureen Van Assche)*

#### **Quatrième rapport du Secrétaire général de l'ONU sur le principe de la responsabilité de protéger présenté devant l'Assemblée générale**

*Responsabilité de protéger: réagir de manière prompte et décisive*, ainsi est intitulé le quatrième rapport annuel du Secrétaire général de l'ONU sur le concept de la responsabilité de protéger les populations du génocide, des crimes de guerre, du nettoyage ethnique et des crimes contre l'humanité. Le 05 septembre 2012, le rapport a été présenté devant l'Assemblée générale par monsieur Ban Ki-moon lui-même,

suivi par un dialogue interactif informel auquel ont participé une cinquantaine d'Etats Membres.

Développant son idée sur base de ses trois rapports précédents sur le principe de la responsabilité de protéger, le Secrétaire général dans son dernier rapport met en avant le troisième pilier du principe, celui de l'action collective par l'entremise du Conseil de sécurité conformément au Chapitre VII de la Charte de l'ONU. En cas d'échec manifeste des mesures des deux premiers piliers, le premier étant la responsabilité première de l'Etat en matière de protection de sa population contre les quatre groupes de crimes, le deuxième celui de l'assistance de la communauté internationale aux états à s'acquitter de cette responsabilité, une réaction prompte et décisive dans le cadre du troisième pilier est envisagée.

Dans un premier temps, le rapport décrit en quelques phrases la genèse de la responsabilité de protéger. Ensuite, divers éléments du troisième pilier sont mis en avant, en précisant les stratégies et dispositifs prévus par la Charte de l'ONU, ainsi que les moyens et les partenaires de la mise en œuvre. Dans ce quatrième rapport, le Secrétaire général prend également le temps d'éclaircir son point de vue sur la notion de la protection responsable, c'est-à-dire le débat sur la façon de traduire la responsabilité de protéger en termes opérationnels de manière responsable, durable et efficace. Il souligne l'importance du fait que l'alerte rapide et l'évaluation de la situation remplissent des conditions d'objectivité, de prudence et de professionnalisme, pour éviter des réactions excessives ou, au contraire, insuffisantes. A cet égard, le sujet de l'utilisation de la force par l'Organisation du Traité de l'Atlantique Nord en Libye n'est pas évité. Le rapport affirme que les mesures non coercitives ont toujours été les moyens privilégiés pour mettre en œuvre la responsabilité de protéger, vu qu'ils servent à prévenir les quatre groupes de crimes et violations visés. Bien que le Secrétaire général répète à plusieurs occasions que l'emploi de la force doit être une solution de dernier recours, il affirme également que nul ne peut prétendre qu'il n'est jamais approprié d'employer des mesures coercitives. Le rapport souligne l'importance d'une réaction rapide et souple qui prend en compte tous les moyens offerts par les Chapitres VI, VII et VIII de la Charte de l'ONU et qui soit adaptée aux circonstances de chaque situation.

Le rapport ne met donc pas seulement en avant divers éléments du troisième pilier ; Il fait également le point sur le principe du devoir de protection et sur son importance fondamentale dans le cadre de la protection des populations contre le génocide, les crimes de guerre, le génocide et les crimes contre l'humanité. En outre, les rapports entre les trois piliers sont analysés et une argumentation contre une distinction trop stricte entre prévention et intervention est mise en avant. Cela est suivi par un vue d'ensemble des progrès réalisés à ce jour dans la mise en œuvre de la responsabilité de protéger et les défis qui restent à relever.

Enfin, le Secrétaire générale affirme qu'une des difficultés dans la mise en œuvre du principe est de reconnaître que les mesures prévues au Chapitre VII sont parfois nécessaires, qu'il faut tirer les leçons de l'expérience passée et rapprocher les différents points de vue concernant la façon de réaliser l'objectif commun de protéger les populations. Le rapport est conclu en disant que l'expérience de la mise en œuvre de la responsabilité de protéger dans des situations particulières a confirmé la validité de la stratégie définie dans les rapports précédents, mais qu'il est manifestement nécessaire de poursuivre le dialogue sur ces questions à l'Assemblée générale.

Pour plus d'informations, consultez *inter alia* le Rapport du Secrétaire général [http://www.un.org/french/documents/view\\_doc.asp?symbol=A%2F66%2F874&Submit=Recherche&Lang=F](http://www.un.org/french/documents/view_doc.asp?symbol=A%2F66%2F874&Submit=Recherche&Lang=F) et le communiqué de presse du 05 septembre 2012, <http://www.un.org/News/fr-press/docs/2012/AG11270.doc.htm>.

(Laureen Van Assche)

**A review of the article *Complex Legal Frameworks and Complex Operational Challenges: Navigating the Applicable Law across the Continuum of Military Operations* by Laurie R. BLANK**

Military operations undertaken by States (whether separately or in joint operations) take place in a wide spectrum of situations. Their occurrence in conflict/ non-conflict situations raise challenges for actors on the ground. The identification of applicable law is essential to enable the actors involved to define their engagement. This task often gets complicated when conflicts involve elements of both international and non-international armed conflicts and/or evolve over time, making the issue of characterization even more pertinent. Operations conducted in such circumstances involve multiple legal frameworks, such as domestic law, international humanitarian law, human rights law etc. Understanding how those interact in practice is both challenging and fundamental for promoting the rule of law.

The existence of strategic advantage, from a policy standpoint, gained from the flexibility afforded by non-characterization is not overlooked. However, the author stresses that characterization not only matters from a legal perspective but also in the normative sense, offering civilians and military actors more certainty and clarity in performing their mission. Several examples are given that highlight the impact of

diverging legal qualifications or the absence thereof during complex conflict situations.

For instance, the example of the US policy, which automatically applies the law of international armed conflicts, is given to illustrate how failing to correctly identify the applicable law can lead to the troops forfeiting opportunities on the ground or expose them to the risk of violating other norms of international law. Several other issues such as detention, the use of force, choice of weapons and targeting are discussed thoroughly and the consequences of characterization are clearly stated and illustrated by recent examples. Attention is also paid to multinational missions such as the ones under NATO command and the effect of differing qualification on the conduct of the operations.

The author succeeds in giving an accurate portrait of the various laws to which troops are confronted during action. The plea for clear and consistent characterization and its benefits for actors on the ground is mitigated by the complicated nature of contemporary operations. Not only may uncertainty and ambiguities prove impossible to eradicate but also, the incentives policymakers have to not qualify a situation and thus remain flexible are not likely to disappear. In the given situation, the goal, to minimize the ambiguities and their effects on the ground, can only be achieved through first understanding the consequences of characterization (or lack thereof) and acting accordingly at all stages.

For more information see Blank, Laurie R. (2012). Complex Legal Frameworks and Complex Operational Challenges: Navigating the Applicable Law across the Continuum of Military Operations. In: *Emory International Law Review*, 26(1), pp. 87-137.

(Adélaïde Kanyange)

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