



NEWS FLASH N° 6

Selected Developments

Recognition of the existence of an armed conflict in Colombia

On 24 May 2011 the Colombian Senate passed a government-sponsored bill recognising the existence of an armed conflict in Colombia. For more information see e.g. :

http://www.economist.com/blogs/americasview/2011/05/armed_conflict_colombia?fsrc=nwl|wwp|05-26-11|politics_this_week.

ICC arrest warrants not enforced by Djibouti

On 12 May 2011, the ICC informed the UN Security Council that Mr. Omar al-Bashir, the President of Sudan, has recently visited Djibouti. In 2009 and 2010, the ICC issued arrest warrants for Mr. Bashir for genocide, war crimes and crimes against humanity allegedly committed in the Darfur region in Sudan. As Djibouti is a State Party to the Rome Statute of the ICC it is supposed to enforce these arrest warrants, but Mr. Bashir was not arrested during the visit.

For more information see e.g. UN press release of 12 May 2011.

ICC arrest warrant for Colonel Qadhafi and two others

On 16 May 2011, the ICC Prosecutor Luis Moreno Ocampo asked the ICC to issue arrest warrants for Colonel Qadhafi, his son Saif Al Islam Qadhafi and Libyan intelligence chief Abdullah Al Sanousi, for committing crimes against humanity during the ongoing conflict in Libya.

The Prosecutor said that his office has gathered direct evidence detailing the orders issued by Colonel Qadhafi, the role of Saif Al Islam Qadhafi in recruiting mercenaries, and the participation of intelligence chief Abdullah Al Sanousi in attacks against demonstrators. Mr. Moreno-Ocampo said the evidence indicated that pro-Government forces had attacked civilians in their homes, repressed protests using live ammunition, deployed heavy artillery against participants in funeral

processions and placed snipers to kill people as they left mosques after prayers. He said persecution was still occurring in areas of Libya under the control of the Qadhafi regime, with his forces preparing lists of names of alleged dissidents, apparently before they are arrested and tortured.

On 1 June 2011, the International Commission of Inquiry led by Professor Cherif Bassiouni and established by the UN Human Rights Council to investigate alleged violations of international human rights law in Libya reported that Libyan Government forces have committed war crimes and crimes against humanity “as part of a widespread or systematic attack against a civilian population.” The International Commission of Inquiry received fewer reports of facts which would amount to the commission of international crimes by opposition forces; however, it did find some acts which could amount to war crimes. With regard to allegations concerning the conduct of hostilities by NATO, the Commission concluded that it was not in a position to assess the veracity of the information received concerning indiscriminate attacks on civilians. The Commission has not, however, seen evidence to suggest that civilians or civilian objects have been intentionally targeted by NATO forces, nor that it has engaged in indiscriminate attacks. The report is available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.44_AUV.pdf.

On 27 June 2011, the ICC Pre-Trial Chamber considered that there are “reasonable grounds” to believe that the three suspects committed the alleged crimes and that their arrests appear necessary to ensure their appearances before the ICC. The ICC added that their arrests are also necessary to ensure that they do not continue to obstruct and endanger the ICC’s investigations, and to prevent them from using their powers to continue the commission of crimes within the its jurisdiction. Therefore it accepted the request from the Prosecutor and issued arrest warrants for the three men.

The Prosecutor said that Libyan authorities have the primary responsibility to arrest them. Libya is not a State party to the Rome Statute of the ICC but the situation in Libya was referred to the ICC in February 2011 by UN Security Council Resolution 1970.

For more information see e.g. UN press releases of 17 May 2011; of 31 May 2011; and of 1, 9, 27 and 28 June 2011.

Dutch Court of Appeal finds The Netherlands responsible for the death of three Muslim men from Srebrenica in 1995

See ASIL’s International Law in Brief of 14 July 2011, available at <http://www.asil.org/ilib110714.cfm#j1>.

European Court of Human Rights (ECtHR) ruled in cases over airstrikes in the Chechen Republic

On 3 May 2011, the ECtHR ruled in the cases *Kerimova and Others v. Russia* and *Khamzayev and Others v. Russia* regarding counter-terrorism airstrikes carried out by Russian forces on the town of Urus-Martan, in the Chechen Republic in 1999. These attacks killed and wounded several citizens and destroyed homes.

The ECtHR dismissed the Russian Federation's argument that it did not know the identity of the planes in one of the attacks because destruction of documents was required by established procedures, and criticized the Russian Federation's failure to submit background documents for this attack.

The ECtHR held that the Russian Federation violated the right to life (Article 2 of the European Convention on Human Rights (ECHR)). The Russian Federation alleged that it informed the civilian population via leaflets and the media, but the ECtHR found the alleged precautionary measures inadequate and inefficient. The ECtHR also criticized the use of high-caliber fragmentation bombs, which according to the ECtHR are indiscriminate weapons that should not be used in a populated area.

The ECtHR further held that the investigations into the facts were in breach of Article 2 of the ECHR being neither thorough nor effective. It held also that the destruction of home and property by the airstrikes constituted a violation of the right to a home and family life (Article 8 of the ECHR) and of the right to property (Article 2 of the Protocol 1 to the ECHR).

The judgments are available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=kerimova&sessionid=74641383&skin=hudoc-en> and <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=khamzayev&sessionid=74641383&skin=hudoc-en>. For more information see e.g. ASIL's International Law in Brief of 9 May 2011.

Former Rwandan chief of staff of the armed forces convicted by the ICTR

On 17 May 2011, the ICTR convicted Mr. Augustin Bizimungu of committing genocide, crimes against humanity for murder, extermination and rape and violations of articles of the Geneva Conventions. The ICTR acquitted him on a count of conspiracy to commit genocide and dismissed a charge of complicity to commit genocide. Mr. Bizimungu was the chief of staff of the Rwandan armed forces in April 1994, when the genocide against Tutsis and moderate Hutus started. He was sentenced to 30 years in prison.

In the same trial Mr. François-Xavier Nzuwonemeye, who served as commander of the Reconnaissance battalion in the Rwandan army, and Mr. Innocent Sagahutu, his second-in-command, were found guilty of similar war crimes charges. The ICTR found *inter alia* that both Nzuwonemeye and Sagahutu are criminally responsible as superiors for the killing of ten Belgian UNOMIR soldiers. They were each sentenced to 20 years in prison.

The former chief of staff of the national gendarmerie, Mr. Augustin Ndindiliyimana, was also convicted but the ICTR ordered his release as he was sentenced to the time he has served in prison since his arrest in Belgium.

See: <http://www.unhcr.org/refworld/pdfid/4e08aacc2.pdf>.

Credible reports of war crimes during the final stages of the Sri Lanka conflict

On 31 March 2011, the UN Secretary-General's panel of experts on accountability in Sri Lanka issued a report with respect to the final stages of the conflict in Sri Lanka that ended in May 2009. The panel has found that a number of allegations of serious violations of international humanitarian and human rights law committed by both the Liberation Tigers of Tamil Eelam (LTTE) and the Government of Sri Lanka are credible, some of which would amount to war crimes and crimes against humanity. The allegations of violations committed by the Government include killing of civilians through widespread shelling and the denial of humanitarian assistance. The allegations concerning the LTTE include using civilians as a human buffer and killing civilians attempting to flee LTTE control.

The panel's first recommendation is that the Government of Sri Lanka should respond to the serious allegations by initiating an effective domestic accountability process by commencing genuine investigations into alleged violations of international humanitarian and human rights law committed by both sides involved in the armed conflict.

The report was shared with the Sri Lankan Government, which according to the Belgian newspaper *De Standaard* rejected it as fallacious and prejudiced.

For more information see UN press releases of 25 and 26 April 2011 and *De Standaard* (in Dutch) of 27 April 2011.

ECtHR hands down landmark judgments on the extraterritorial application of the ECHR

Al-Skeini and Others v. United Kingdom & Al-Jedda v. United Kingdom

See ASIL's International Law in Brief of 14 July 2011, available at <http://www.asil.org/ilib110714.cfm#j1>.

Response to killing of Osama Bin Laden by US Special Forces at compound in town of Abbottabad, on 2 May 2011

Two UN Special Rapporteurs who report in an independent and unpaid expert capacity to the UN Human Rights Council, namely Christof Heyns (the expert dealing with extrajudicial, summary or arbitrary executions) and Martin Scheinin (the expert dealing with human rights and counter-terrorism), said the following in a joint statement of 6 May 2011: *"In certain exceptional cases, use of deadly force may be permissible as a measure of last resort in accordance with international standards on the use of force, to protect life, including in operations against terrorists. However, the norm should be that terrorists be dealt with as criminals, through legal processes of arrest, trial and judicially decided punishment. Actions taken by States in combating terrorism, especially in high profile cases, set precedents for the way in which the right to life will be treated in future instances"*. The experts added: *"In respect of the recent use of deadly force against Osama bin Laden, the United States of America should disclose the supporting facts to allow an assessment in terms of international human rights law standards. For instance it will be particularly important to know if the planning of the mission allowed an effort to capture Bin Laden"*. The statement is available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10987&LangID=E>.

On 19 May 2011, Mr. Harold Hongju Koh, the US Department of State Legal Adviser, issued an opinion on the lawfulness of the US operation at *Opinio Juris* (See: http://opiniojuris.org/2011/05/19/the-lawfulness-of-the-us-operation-against-osama-bin-laden/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+opiniojurisfeed+%28Opinio+Juris%29).

Mr. Ashley S. Deeks has authored an article on Pakistan's Sovereignty and the Killing of Osama Bin Laden. The article is available at: <http://www.asil.org/insights110505.cfm>.

Milestone for the ICTY: All 161 indicted persons arrested

On 26 May 2011, after spending 16 years on the run, war crimes fugitive Ratko Mladic, who headed the Bosnian Serb Army (VRS) Main Staff during the conflict in Bosnia Herzegovina in the 1990s, was arrested in Serbia. He was transferred to The Hague to stand trial before the ICTY on 31 May 2011.

He is facing charges of genocide, crimes against humanity and war crimes including in connection with massacre of Srebrenica in July 1995 and the protracted and deadly siege of Sarajevo between 1992 and 1995.

The indictment states that Mr. Mladic committed the crimes as part of a joint criminal enterprise whose objective was to eliminate or permanently remove Bosnian Muslim, Bosnian Croat and other non-Serb inhabitants from large areas of Bosnia and Herzegovina.

On 20 July 2011, war crimes fugitive Goran Hadžic, former “President” of the self-proclaimed breakaway state within Croatia, “Republic of Serbian Krajina”, was arrested by authorities in Serbia following seven years at large. Two days later he was transferred to The Hague to stand trial before the ICTY.

Mr. Hadžic is charged with war crimes and crimes against humanity in relation to his alleged actions in eastern Slavonia, Croatia, from August 1991 to June 1992. He is accused of participating in a joint criminal enterprise to permanently remove a majority of the Croat and other non-Serb population from about a third of the territory of Croatia, with the aim of establishing a new Serb-dominated State.

With all of the 161 indicted persons having now been arrested, these last two arrests are a milestone in the completion of the ICTY’s mandate.

For more information see e.g. UN press releases of 26 and 28 May 2011; of 1, 2 and 4 June 2011; and of 20 July 2011. See also ASIL’s International Law in Brief of 10 June 2011.

(Alfons Vanheusden)

Call for Papers for the 2012 Lieber Society Richard R. Baxter Military Writing Prize

Since 2007, the Lieber Society on the Law of Armed Conflict, an Interest Group of the American Society of International Law, has, through its Lieber Society Military Prize, annually recognized a paper that significantly enhances the understanding and implementation of the law of war. The prize is given for exceptional writing in English by an active member of the regular or reserve armed forces, regardless of nationality.

The Prize. The winner will receive a certificate confirming that he or she has won the 2012 Lieber Society Richard R. Baxter Military Prize, \$500.00, and a one-year membership to the American Society of International Law (ASIL).

The judges may also select additional persons to receive Lieber Society Richard R. Baxter Military Prize Certificates of Merit.

Request for Assistance. Any person receiving this Call for Papers who is aware of exceptional writing that meets the qualifications of this competition is requested to nominate the paper directly to the Lieber Society and forward this Call to the author of that paper.

Definition of the Law of War. For this competition, the Law of War is that part of international law that regulates the conduct of armed hostilities. Papers may address any aspect of the law of war, including, but not limited to the use of force in international law; the conduct of hostilities during international and non-international armed conflicts; protected persons and protected objects; the law of weapons; rules of engagement; treatment of detainees, to include interrogation procedures; and occupation law. Papers addressing practical problems confronting members of armed forces are preferred.

Qualifications for entering the competition. Persons submitting papers do not have to be ASIL members. They may be citizens of any nation, but they must be an active member of a nation's regular or reserve armed forces.

Papers that may be entered. Papers submitted in this competition must be in English (or translated into English if written in another language) and not more than 35 pages long if printed with single line spacing or 70 pages if written with double line spacing, including footnotes. Both papers that have been published and papers that have not been published will be considered for the Prize.

Required Contact Data. All submissions must contain the following data on the author of the paper: full name and military rank or rating, current postal and e-mail addresses, current telephone and fax numbers. If a person other than the author is making the submission, it must also contain the above data for the person submitting the paper.

Deadline for submitting papers. Papers for the 2012 competition must be received no later than **Saturday, 31 December 2011.**

Use of email to submit papers. Electronic submissions in Adobe format (.pdf) or Microsoft Word (.doc) are preferred. They should be sent to Lieber Military Prize Coordinator Eric Talbot Jensen at jensene@law.byu.edu.

Use of the postal system to submit papers. Submissions by postal mail should be sent to:

Eric Talbot Jensen
540 JRCB
Brigham Young University
Provo, UT 84602

Acknowledgement of submissions. All submissions will be acknowledged by e-mail.

Announcement of winner. The winner and any persons receiving Certificates of Merit will be announced at the Annual Meeting of the American Society of International Law in Washington, DC, March 28-31, 2012.

(The Lieber Society)

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 50th 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.

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 September 2011 (extended deadline!) 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 27 September 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.

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

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)

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

See the Society's website : www.soc-mil-law.org.

Publications of interest / Publications intéressantes

For an article on the upcoming vacancy on the US Court of Appeals for the Armed Forces, see: http://www.jnslp.com/wp-content/uploads/2011/06/10_Fidell.pdf.

The Joint Statement of 15 May 2011 of the Sixth Colloquium of International Prosecutors (six prosecutors representing the ICC, the Special Court for Sierra Leone, the ICTR and ICTY, the Extraordinary Chambers in the Courts of Cambodia, and the Special Tribunal for Lebanon) is available: <http://www.sc-sl.org/LinkClick.aspx?fileticket=TwFuqmhQvS4%3d&tabid=53>.

Robert Pickard, Guidance on the development of legislation and administration systems in the field of cultural heritage, Council of Europe Publishing, 131 pages, ISBN: 978-92-871-6922-8, 12 euro/24 USD + 10% postage. To place an order directly: http://book.coe.int/sysmodules/RBS_page/admin/redirect.php?id=36&lang=EN&produit_aliasid=2607

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