



NEWS FLASH N° 7

Publications of interest / Publications intéressantes

HB = hardback; PB = paperback.

Eitan BARAK, *Deadly Metal Rain: The Legality of Flechette Weapons in International Law: A Reappraisal following Israel's Use of Flechettes in the Gaza Strip (2001-2009)*, Nijhoff, 2011, 322 pp., ISBN 9789004167193, \$ 166.00 (HB), <http://www.brill.nl/about/imprints/martinus-nijhoff-publishers>

Abdelwahab BIAD, *La Cour Internationale de Justice et le droit international humanitaire: une «lex specialis» revisitée par le juge*, Bruylant, 2011, 210 pp., ISBN 9782802730019, € 35 (PB), <http://www.bruylant.be/st/en/index.php>

Alexander BREITEGGER, *Cluster Munitions and International Law: Disarmament with a Human Face?*, Routledge, 2012, 271 pp., ISBN 0415668158, £ 80.00 (HB), <http://www.routledge.com/>

Mark A. DRUMBL, *Reimagining Child Soldiers in International Law and Policy*, Oxford University Press, 2012, 276 pp., ISBN 9780199592661, \$ 35.00 (PB), <http://ukcatalogue.oup.com/>

Marco ODELLO & Ryszard PIOTROWICZ (eds.), *International Military Missions and International Law*, Nijhoff, 2011, 256 pp., ISBN 9789041111807, € 156.00 (HB) <http://www.brill.nl/about/imprints/martinus-nijhoff-publishers>

Roland OTTO, *Targeted Killings and International Law: With Special Regard to Human Rights and International Humanitarian Law*, Springer, 2012, 679 pp., ISBN: 9783642248573, € 109.95 (HB), <http://www.springer.com/law/international/book/978-3-642-24857-3>

Jean-Marc SOREL & Isabelle FOUCHARD (eds.), *Les tiers aux conflits armés et la protection des populations civiles*, Pedone, 2010, 238 pp., ISBN 9782233006042, € 27.56 (PB), <http://www.pedone.info/>

Mara TIGNINO, *L'eau et la guerre: éléments pour un régime juridique*
Bruylant, 2011, 494 pp., ISBN 9782802734314, € 110.00 (HB),
<http://www.bruylant.be/st/en/index.php>

(Marco Benatar and Claudia Jacobsen)

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

It is with great pleasure that we invite you to participate in the **19th Congress of the International Society for Military Law and the Law of War**. The Congress will be held at the hotel Fairmont le Château Frontenac in Québec City from 1 May 2012 to 5 May 2012. The central theme is "*legal interoperability and ensuring observance of the law in multinational deployments*". For more information, please contact Mr. Luc De Coninck, General Secretariat, Brussels, soc-mil-law@scarlet.be, +32 2 742 61 78, or see www.soc-mil-law.org.

Beijing Conference / Conférence au Pékin

Report of the Beijing Conference on International Humanitarian Law and Peace Operations

From 9 to 13 November 2011 an international conference took place at the Empark Grand Hotel in Beijing on international humanitarian law and peace operations. The conference was co-organized by the Academy of Military Science of China's People's Liberation Army (PLA) and the International Society for Military Law and the Law of War, and hosted by China's Military Law Society. Some 90 participants hailing from 23 different countries participated in this important event.

On Thursday 9 November 2011 the Political Commissar of the Academy of Military Science, Lieutenant General Sun Sijing, and the President of the International Society for Military Law and the Law of War, Mr. Arne Willy Dahl, wished a warm welcome to all participants followed by a reception hosted by the Chinese authorities.

The next day, the conference officially got underway with an opening ceremony in the presence of various dignitaries, such as the Chief of Foreign Affairs of the Office of the Ministry of National Defense, Major General Qian Lihua, and the President of the Academy of Military Science, PLA, Air Force General Liu Chengjun. In his keynote speech Lieutenant General Liu Jixian, Vice-President of the Academy of Military Science, PLA, and Chairman of China's Military Law Society, offered comprehensive insight into the PLA's practice of international humanitarian law. The subsequent presenters focused on the legal framework of peace operations, the threshold of armed conflict and the application of international humanitarian law to

UN peacekeeping operations. The presentations and the related questions from the audience stimulated an interesting panel discussion on these themes. In the late afternoon, Dr. Claude Bruderlein, Director of the Program on Humanitarian Policy and Conflict Research at Harvard University, chaired a panel on the topical issue of the applicability of human rights treaties in peace operations and on SOFA development and the status of forces in peace operations. The day was concluded with an informative presentation on monitoring mechanisms in the implementation of international humanitarian law, particularly in the context of peace operations.

On Friday 11 November 2011 the participants were treated to a morning of presentations and debate on self-defense as well as the protection of civilians in peace operations. In the afternoon particular attention was paid to legal restrictions on the use of weapons and capabilities by peacekeepers and recent developments in international humanitarian law in the context of peace operations. In the evening Professor Boris Kondoch, Executive Director at the Asia Center for Peace and Security Studies, shared his views on the accountability of peacekeepers and the last presentation of that day dealt with the case of East Timor and the lessons learned by the Australian Armed Forces. After the closing ceremony the participants enjoyed a taste of Chinese cuisine and were delighted by the prospect of an enriching social-cultural trip, to be organized by the Chinese hosts the following day.

On Saturday 12 November 2011 the foreign participants paid a visit to the magnificent Forbidden City and Tiananmen Square in Beijing and to the astonishing Great Wall of China. The male participants learned that Mao once said that a man can only be a real man if he has climbed the Great Wall and with these motivating words in mind most if not all participants proudly succeeded in reaching the summit set as their target by the trip organizers. The participants felt privileged to have taken in the delightful scenery of this famous landscape.

This conference marked the start of a research project of the International Society for Military Law and the Law of War, launched to establish an authoritative Manual of the International Law of Peace Operations. The conference proved most fruitful in identifying areas of the law which require further research with a view to clarifying their content and practical implications for policy-makers and troops in the field. All participants paid tribute to the wonderful way in which the Chinese hosts had taken care of every organizational aspect of the conference. During the discussions it was also confirmed that the desire for international peace and security, with due regard to States' territorial integrity and sovereignty, remains (and must remain) central when looking into the subject matter of peace operations. The conference offered excellent networking opportunities and took place in a collegial spirit conducive to future debates on this fascinating topic.

(Alfons Vanheusden)

Rapport de la Conférence de Pékin sur le droit international humanitaire et les opérations de paix

Du 9 au 13 novembre 2011 s'est tenue une conférence internationale sur le droit international humanitaire et les opérations de paix à l'*Empark Grand Hotel* à Pékin. La Société de Droit Militaire de Chine a accueilli la conférence, qui était organisée en étroite collaboration entre l'Académie des Sciences Militaires de l'Armée Populaire de Libération de Chine et la Société Internationale de Droit Militaire et de Droit de la Guerre. Quelque 90 participants venant de 23 pays différents ont participé à cette importante manifestation.

Le jeudi 9 novembre 2011, le Lieutenant-général Sun Shijing, Commissaire politique de l'Académie des Sciences Militaires, et Monsieur Arne Willy Dahl, Président de la Société Internationale de Droit Militaire et de Droit de la Guerre, ont prononcé de chaleureux discours de bienvenue à tous les participants, avant de les inviter à une réception organisée par les autorités chinoises.

Le lendemain s'est tenue l'ouverture officielle de la conférence par une cérémonie en présence de plusieurs dignitaires tels que le Général-major Qian Lihua, Chef du Bureau des Affaires étrangères du Ministère de la Défense de Chine, et le Général de la Force aérienne chinoise Liu Chengjun, Président de l'Académie des Sciences Militaires. Dans son discours inaugural, le Lieutenant-général Liu Jixian, Vice-Président de l'Académie des Sciences Militaires et Président de la Société de Droit Militaire de Chine, a donné un aperçu général des pratiques de droit international humanitaire au sein de l'Académie des Sciences Militaires. Les orateurs suivants se sont concentrés sur le cadre juridique des opérations de paix, sur le seuil des conflits armés et sur l'application du droit international humanitaire aux opérations de maintien de la paix de l'Onu. Les présentations et les questions du public ont lancé un débat intéressant sur ces thèmes. En fin d'après-midi, le Dr. Claude Bruderlein, Directeur du Programme de recherches sur les politiques humanitaires et les conflits, de l'université de Harvard, a présidé une session sur la question d'actualité de l'applicabilité des traités relatifs aux droits de l'homme dans le contexte des opérations de paix et sur l'évolution du SOFA et du statut des forces pendant les opérations de paix. La journée s'est clôturée par une présentation informative sur les mécanismes de surveillance de la mise en œuvre du droit international humanitaire, et plus en particulier dans le contexte des opérations de paix.

Le vendredi 11 novembre 2011, les participants ont été invités à une matinée de présentations et de discussions sur la légitime défense et sur la protection des civils pendant les opérations de paix. L'après-midi a surtout été consacrée aux restrictions juridiques en matière d'utilisation d'armes et de moyens par les soldats de la paix et aux récentes évolutions dans le domaine du droit international humanitaire dans le contexte des opérations de la paix. En soirée, le Professeur Boris Kondoch, Directeur

exécutif auprès du Centre asiatique d'études sur la paix et la sécurité, a partagé ses points de vue sur la responsabilité des soldats de la paix, et la dernière présentation de la journée portait sur la question du Timor Oriental et les enseignements tirés par les forces armées australiennes. A l'issue de la cérémonie de clôture, les participants ont eu l'occasion de déguster les saveurs de la cuisine chinoise et se sont réjouis à la perspective de participer à une excursion socioculturelle enrichissante organisée par les hôtes chinois le lendemain.

Le samedi 12 novembre 2011, les participants étrangers ont visité la magnifique Cité interdite et la place Tiananmen à Pékin ainsi que la prodigieuse Grande Muraille de Chine. Les participants masculins ont appris que Mao avait dit un jour que « celui qui n'a pas gravi la Muraille de Chine n'est pas un homme véritable ». C'est avec ces paroles motivantes à l'esprit que la plupart – pour ne pas dire tous – les participants ont fièrement réussi à atteindre le sommet que les organisateurs de l'excursion leur avaient fixé comme objectif. Les participants ont eu le privilège de profiter de ce magnifique paysage.

Cette conférence a marqué le début d'un projet de recherche de la Société Internationale de Droit Militaire et de Droit de la Guerre visant à réaliser un Manuel accrédité de Droit International des Opérations de Paix. La conférence s'est avérée productive à cette fin. Elle a permis de déterminer les domaines de droit nécessitant des recherches plus poussées en vue de clarifier leur teneur et les implications pratiques pour les décideurs et les troupes sur le terrain. Au cours des discussions, il s'est avéré que lors de l'étude de la question des opérations de paix, il est souhaitable de (continuer de) réserver un intérêt tout particulier à la paix et à la sécurité en tenant compte de l'intégrité territoriale et de la souveraineté des Etats. La conférence a en outre offert d'excellentes opportunités de prises de contact et s'est déroulée dans un esprit de collégialité propice à des discussions futures sur ce sujet captivant. Quant à l'organisation du congrès, tous les participants ont rendu hommage aux excellents talents organisationnels des autorités chinoises.

(Alfons Vanheusden)

Senior Khmer Rouge leader sentenced to life in prison

The Supreme Court Chamber of the Extraordinary Chambers in the Courts of Cambodia upheld the conviction of Kaing Guek Eav, alias Duch, and ordered that he be jailed for life, the maximum sentence under the law for crimes against humanity and grave breaches of the 1949 Geneva Conventions. In July 2010 Duch was convicted of crimes against humanity. He appealed against this verdict in March 2011. "The crimes by Kaing Guek Eav were undoubtedly among the worst in recorded human history. They deserve the highest penalty available," Judge Kong Srim said. Duch was the commander of Tuol Sleng prison in Phnom Penh, where at least 12,000 men, women and children deemed enemies of the regime were tortured and then executed in "killing fields" just outside the country's capital. The three other most senior surviving leaders of the Khmer Rouge were put on trial for genocide and crimes against humanity in November 2011. Their trial is ongoing.

For more information see *inter alia* the UN press release of 3 February 2012.

(Claudia Jacobsen)

ICC confirmed charges against four prominent Kenyans for post-election violence

In December 2007 President Mwai Kibaki was declared the winner of the presidential elections. Supporters of Kibaki's opponent Raila Odinga alleged electoral manipulation. As a result of clashes between supporters of these two rival presidential candidates more than 1,100 people were killed, 3,500 injured and up to 600,000 were forcibly displaced in the violence. According to ICC Chief Prosecutor Luis Moreno-Ocampo there were at least hundreds of instances of rape and 100,000 properties were destroyed.

In November 2009 the Prosecutor started his investigation into the post-poll violence and in December 2010 the ICC named 6 suspects.

In January 2012 the pre-trial chamber of the ICC confirmed charges against:

- Uhuru Muigai Kenyatta, Deputy Prime Minister and Minister of Finance
- William Samoei Ruto, former Minister of Higher Education, Science and Technology
- Francis Kirimi Muthaura, Head of the Public Service and Secretary to the Cabinet
- Joshua arap Sang, Head of Operations for KASS FM radio station

Lacking sufficient evidence, the pre-trial chamber declined to confirm charges against two other suspects: Henry Kiprono Kosgey, former Minister of Industrialization, and Mohamed Hussein Ali, the Police Commissioner at the time of the violence.

The Prosecutor charged Mr. Ruto and Mr. Sang for crimes against humanity of murder, deportation or forcible transfer and persecution. Mr. Ruto was charged as indirect co-perpetrator, while Mr. Sang was charged with having contributed to said crimes against humanity. Considering the charges and presented evidence, the Chamber found that the Prosecutor has established substantial grounds to believe that the crimes against humanity of murder, deportation or forcible transfer and persecution were committed and that Mr. Ruto and Mr. Sang are responsible for the charges levied against them. The Chamber confirmed the charges against Mr. Ruto as an indirect co-perpetrator with others, pursuant to article 25(3)(a) of the Rome Statute, while it found that Mr. Sang contributed to the commission of said crimes against humanity, pursuant to article 25(3)(d)(i), to the extent specified in the written decision.

The Prosecutor charged Mr. Muthaura and Mr. Kenyatta with crimes against humanity of murder, deportation or forcible transfer, rape and other forms of sexual violence, other inhumane acts and persecution. Mr. Muthaura and Mr. Kenyatta were charged as indirect co-perpetrators. According to the Chamber the presented evidence gives substantial grounds to believe that Mr. Muthaura and Mr. Kenyatta are criminally responsible for the alleged crimes, as indirect co-perpetrators, pursuant to article 25(3)(a) of the Rome Statute, having gained control over the Mungiki and directed them to commit the crimes.

For more information see *inter alia* the UN press releases of 24 January 2012 and 26 January 2012.

(Claudia Jacobsen)

International Court of Justice ruled against Italy in nazi compensation claims

After a court in Italy ordered Germany to compensate an Italian civilian sent to a German labour camp in 1944, Germany filed a case against Italy in December 2008. Germany claimed that this Italian judgement failed to respect their jurisdictional immunity under international law. As a result of the Italian ruling, more than 80 new cases with 500 plaintiffs were pending and also relatives of Greek victims refilled cases before Italian courts. According to Italy such claims were admissible as the abuses committed by German troops amounted to "international crimes" which had precedence over state immunity.

In February 2012 the International Court of Justice found that Italy had violated its obligation to respect Germany's immunity under international law by allowing civil claims seeking reparations for Nazi war crimes to be brought against it in Italian courts. The Court concluded that customary international law continued to require that a State be accorded immunity in proceedings for torts allegedly committed on the territory of another State by its armed forces and other organs in the course of conducting an armed conflict.

The Court concluded that, even assuming that the rules of the law of armed conflict which prohibit murder, deportation and forced labour were rules of *jus cogens*, there was no conflict between those rules and the rules on State immunity. It considered that the two sets of rules addressed different matters. The rules of State immunity were confined to determining whether or not the courts of one State may exercise jurisdiction in respect of another State, they did not bear upon the question whether or not the conduct in respect of which the proceedings were brought was lawful or unlawful. The Court concluded that, even on the assumption that the proceedings in the Italian courts involved violations of *jus cogens* rules, the applicability of the customary international law on State immunity was not affected.

According to the ICJ Italy had also violated its obligation to respect the immunity which Germany enjoyed under international law by taking measures of constraint against Villa Vigoni, German State property situated in Italian territory, and by declaring enforceable in Italy decisions of Greek civil courts based on violations of international humanitarian law committed in Greece by Nazi Germany. The Court found that the Villa Vigoni was being used for governmental purposes that were entirely non-commercial, that Germany had never expressly consented to the taking of a measure such as the legal charge in question and that Germany had not allocated the property for the satisfaction of the judicial claims against it. The Court observed that a court seized of an application for exequatur of a foreign judgment rendered against a third State had to ask itself whether, in the event that it had itself been seized of the merits of a dispute identical to that which was the subject of the foreign judgment, it would have been obliged under international law to accord immunity to the respondent State.

Italy must ensure that the decisions of its courts and those of other judicial authorities infringing on Germany's immunity cease to have effect.

For more information see *inter alia* the UN press release of 6 February 2012, <http://www.bbc.co.uk/news/world-europe-16869814> and <http://www.icj-cij.org/presscom/index.php?pr=2404&p1=6&p2=1&lang=en>

(Claudia Jacobsen)

Four men accused of Hariri killing in absentia

The Special Tribunal for Lebanon (STL) will try four men in absentia: Salim Jamil, Mustafa Amine Badreddine, Hussein Hassan Oneissi and Assad Hassan Sabra. They are accused of carrying out the killing of former Lebanese Prime Minister Rafiq Hariri on 14 February 2005. Mr. Hariri died when a suicide bomber drove a van packed with 2,500 kg of explosives into his convoy in Beirut.

All four men are charged with conspiracy to commit a terrorist act. Mr. Ayyash and Mr. Badreddine, both senior Hezbollah officials, are also charged with committing a terrorist act by means of an explosive device, intentional homicide with premeditation, and attempted intentional homicide. The indictment stated that Mr. Badreddine was the overall director of the operation and that Mr. Ayyash had coordinated the attack on the ground. Mr. Oneissi and Mr. Sabra also face charges of being accomplices in the crimes and of trying to sow a false trail by producing a video tape with a fake claim of responsibility.

Till now the Lebanese authorities were not able to find the accused men at their last known residences, places of employment and other locations. The STL underlined that prosecuting accused persons in their absence was "a measure of last resort to ensure that the pursuit of justice is not paralyzed by those who choose to abscond."

The Hague-based court did not say when the trial will start.

For more information see *inter alia* the UN press release of 2 February 2012.

(Claudia Jacobsen)

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