

## REPORTS AND DOCUMENTS

# National implementation of international humanitarian law

## Biannual update on national legislation and case law July–December 2007

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### A. Legislation

#### Azerbaijan

The *Law on the Red Crescent Society of Azerbaijan*<sup>1</sup> was adopted on 8 May 2007 and entered into force on 22 May 2007. The law establishes the status and legal basis of the Red Crescent Society of Azerbaijan and defines the scope of the Society's activities. It confers upon the Society the rights and entitlements provided by national legislation to non-governmental organizations. The law authorizes the Society to conclude agreements with public institutions at the central and local levels, to use the red crescent emblem in accordance with national legislation, and to carry out its humanitarian mandate in accordance with Azeri laws. The law was supplemented on 22 May 2007 by a presidential decree enabling the cabinet to adopt the necessary implementing regulations.

#### Colombia

The *Colombian Armed Forces Directive No. 10/2007 on the Reaffirmation of the Obligations of the Law Enforcement Authorities to Prevent Homicides against Protected Persons*<sup>2</sup> was adopted and entered into force on 6 June 2007. The directive's purpose is to reaffirm the obligation of the Colombian armed forces to comply with the principle of legality and to respect the principles of necessity, proportionality and distinction in the conduct of military operations. The directive confirms the applicability in Colombia of the provisions of Article 3 common to

the 1949 Geneva Conventions and of Additional Protocol II of 1977. The directive also recalls that certain crimes may fall under the jurisdiction of the International Criminal Court (ICC) and establishes, under the authority of the General Commander of the Armed Forces, a temporary committee to assist in conducting investigations of crimes committed against protected persons. The directive further enjoins the General Commander of the Armed Forces to issue instructions in order to incorporate the rules of international humanitarian law (IHL) into the planning and execution of military operations, to lay down rules of engagement and to require the consultation of legal advisers prior to any military engagement.

## Cook Islands

The *Cook Islands Chemical Weapons (Prohibition) Act*, No. 36 of 2007,<sup>3</sup> was approved and entered into force on 30 November 2007. The act gives effect to the provisions of the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. It confers on the Ministry of Foreign Affairs and Immigration the responsibility to act as the national authority in charge of supervising, monitoring and enforcing the act. Actions taken in violation of the prohibitions of the Chemical Weapons' Convention constitute, under the act, criminal offences liable to a fine or to imprisonment, or both. In the event of a violation being attributable to a corporate body, the punishment must apply to that body as well as to any officer or officers of the body who either committed or ordered the offence to be committed or who contributed to the commission of the offence through their negligence.

The *Cook Islands Anti-Personnel Mines Act*, No. 35 of 2007,<sup>4</sup> was adopted and entered into force on 30 November 2007. The purpose of the act is to provide for the implementation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction. The act outlines the prohibitions under the Convention, provides for administrative and criminal sanctions in the event of violations of its provisions, and includes detailed provisions relating to the operation of a fact-finding mission pursuant to Article 8 of the Convention.

- 1 Law on the Red Crescent Society of Azerbaijan. Officially published in the newspaper *Azerbaijan*, no. 111 (4628), on 23 May 2007. A Presidential Decree on the implementation of the Law on the Azerbaijan Red Crescent Society was adopted on 22 May 2007.
- 2 Directiva Permanente No. 10/2007, Reiteración obligaciones para autoridades encargadas de hacer cumplir la ley y evitar homicidios en persona protegida, available at [www.mindefensa.gov.co](http://www.mindefensa.gov.co).
- 3 Chemical Weapons (Prohibition) Act, an Act to give effect to the provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction and for related matters.
- 4 The Anti-Personnel Mines Act, 2007, an Act to implement the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction in the Cook Islands.

## Cyprus

*Additional Protocol (Protocol III) to the Geneva Conventions (Ratification) Act*, No. 39(III) of 2007,<sup>5</sup> entered into force on 2 November 2007. The act gives effect to Protocol III additional to the Geneva Conventions of 12 August 1949 and relating to the Adoption of an Additional Distinctive Emblem, and prohibits the use in the Republic of Cyprus, without authorization, of any of the distinctive emblems or signs defined in the Protocol. Such authorization must be provided by the Council of Ministers and will become effective pursuant to its publication in the *Official Journal*. The act provides for administrative fines for persons who, within the Republic of Cyprus, misuse the distinctive emblems or signs defined in the Protocol.

## Dominican Republic

*Law No. 220-07 on the Protection and the Use of the Emblems and Name of the Red Cross and Red Crescent*<sup>6</sup> was adopted on 2 August 2007 and entered into force on 18 August 2007. The purpose of the law is to protect and regulate the use of the red cross and red crescent emblems and the names used to denote them, as well as 'other emblems, signs and signals' recognized by IHL. It confers on the State Department of the Armed Forces the authority to control and monitor the protective use of the emblem. The law provides for the use of the emblem as an indicative device by the Dominican Red Cross and enjoins the National Society to apply the Regulations on the Use of the Emblem of the Red Cross or the Red Crescent by the National Societies. The law establishes sanctions, including prison sentences or fines, or both, in the event of misuse of the emblems, and stipulates that perfidious use constitutes a war crime punishable under Dominican criminal law.

## Ecuador

*Law No. 2007-84 on the Use and Protection of the Red Cross and Red Crescent Emblems*<sup>7</sup> was adopted on 28 August 2007 and entered into force on 10 September 2007. The law aims to protect the red cross and red crescent emblems and the names used to denote them, as well as the distinctive signs and signals for the identification of medical transports and units, in accordance with the four Geneva Conventions of 1949, their Additional Protocols and Annex I to Additional

5 The Additional Protocol (Protocol III) to the Geneva Conventions (Ratification) Law, 2007, a Law to Ratify the Additional Protocol to the Geneva Conventions of 12 August 1949 and Relating to the Adoption of an Additional Distinctive Emblem (Protocol III) and Providing for Related Matters. Published in the Cyprus official gazette, Supplement I(III), on 2 November 2007.

6 Ley No. 220-07 sobre la protección y uso de los emblemas y de las denominaciones de Cruz Roja y de la Media Luna Roja. Published in the *Gaceta Oficial*, Year CXLVI, No. 10434, on 18 August 2007.

7 Ley No. 2007-84 Sobre el Uso y Protección del Emblema de la Cruz Roja y de la Media Luna Roja. Published in the *Registro Oficial*, No. 166, on 10 September 2007.

Protocol I. The law defines the authorized uses of the emblem as a protective and indicative device. It outlines sanctions of an administrative nature to be applied in the event of misuse, without prejudice to penal procedures and penalties under applicable criminal law. It confers on the Ministry of National Defence and the Ministry of Public Health a monitoring role regarding the law's implementation. Lastly, it provides for large-scale promotion and dissemination of its contents aimed at the armed forces, civilian authorities and the general public, and instructs the Ministry of Education to include within its educational programmes information about the International Red Cross and Red Crescent Movement, its history and principles, as well as the emblems.

## Hungary

*Order No. 6/2007 of the Hungarian Minister of Defence amending the Service Regulations of the Hungarian Armed Forces*<sup>8</sup> was adopted on 14 February 2007 and entered into force on 1 March 2007. The order amends the Service Regulations of the Hungarian Armed Forces and establishes new rules reflecting Hungary's treaty-based obligations under IHL. Specific amendments to the Service Regulations relate *inter alia* to burial of and respect for the dead, to protection of cultural property placed under enhanced protection and to the marking, removal and destruction of remnants of war. Lastly, the chapter of the Service Regulations on 'signs of identification' is revised to include a reference to the red crystal alongside the other distinctive emblems and signs provided for under the 1949 Geneva Conventions and their 1977 Additional Protocols.

## Japan

*Law No. 32/2007 concerning the Protection of Cultural Property in the Event of Armed Conflict* was adopted on 27 April 2007 and entered into force on 10 September 2007. The law gives effect to the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and to its First and Second Protocols of 1954 and 1999. The law outlines the procedures for the identification of cultural property and for the safeguarding of cultural property in the event of occupation. The law also defines the use of the Convention's distinctive emblem in the event of armed attacks and provides for penalties ranging from a fine to hard-labour prison sentences for persons who violate the Convention and its Protocols. Punishments may apply to perpetrators of certain offences under the law committed outside Japan.

*Law No. 37/2007 concerning Co-operation with the International Criminal Court* was adopted on 27 April 2007 and entered into force on 1 October 2007.<sup>9</sup> The law aims

8 Order of the Minister of Defence No. 6/2007 on the amendment of Order of the Minister of Defence nr. 24/2005 (VI.30) on the adoption of the Service Regulations. Published in *Official Gazette* No. 2007/17 (II.14).

9 Officially published on 11 May 2007.

to ensure the implementation of the 1998 Rome Statute of the International Criminal Court and lays down rules and procedures for co-operation with the ICC, including the surrender and transfer of suspects to the Court. The law also provides for the punishment of offences against the administration of justice in connection with the ICC.

## Montenegro

*Decision No. 03-2160 of the Government of the Republic of Montenegro to form a Commission on Missing Persons*<sup>10</sup> was adopted on 29 March 2007 and entered into force on 19 May 2007. The decision establishes a Commission on Missing Persons, responsible for monitoring, reviewing and making recommendations on matters relating to persons unaccounted for in the context of the armed conflicts in the former Yugoslavia. The Commission's task is to co-ordinate the work of relevant state authorities and other organizations involved in the tracing of missing persons and, in co-operation with family organizations and other interested parties, to assist in resolving the specific needs faced by the families. The Commission is composed of representatives of different ministries, agencies and organizations, including the ministries of Defence, Interior Affairs and Public Administration, Justice, Health, Labour, Health and Social Insurance, the Refugee Bureau and the Red Cross of Montenegro. The government of the Republic of Montenegro appoints the chairman and members of the Commission.

## Republic of Korea

The *Republic of Korea's International Criminal Court (Crimes and Punishment) Act, or Act on the Punishment, etc. of the Crimes within the Jurisdiction of the International Criminal Court Act*, No. 8719 of 2007, was adopted by the National Assembly in November 2007. The act gives effect to the Republic of Korea's obligations under the Rome Statute of the International Criminal Court and establishes procedures for co-operation with the ICC. The act provides for the jurisdiction of domestic courts over the crimes within the jurisdiction of the ICC and assigns a range of penalties applicable to those offences, including the death penalty, life imprisonment and lesser sentences, depending on the gravity of the crimes. The act also provides for the application of the Republic of Korea's acts on Extradition of Criminals and on Mutual Legal Assistance in Criminal Matters to procedures conducted in relation to the ICC. The act also provides for the punishment of offences against the administration of justice in connection with the ICC.

10 Adopted pursuant to Article 12(3) of the Decree of the Government of the Republic of Montenegro (*Official Gazette*, issues 15/94 and 4/97) and officially published in the *Official Gazette of the Republic of Montenegro*, issue 25/07 on 11 May 2007.

## Samoa

The *International Criminal Court Act*, No. 26 of 2007,<sup>11</sup> was adopted on 9 November 2007 and entered into force on 1 July 2008. The act gives effect to the Rome Statute of the International Criminal Court in Samoa and establishes procedures for co-operation with the ICC. These include rules on the enforcement and the serving of sentences in Samoa. The act further incorporates into Samoan law the crimes defined in the Rome Statute, and provides for sentences ranging from life imprisonment to lesser prison sentences applicable to any person who, in Samoa or abroad, commits any of the crimes defined in the act. The act also includes provisions on command responsibility and on the exclusion of the excuse of superior orders as a defence, and rules out official capacity as a bar to arrest, prosecution or surrender to the ICC. The act further provides for the punishment of offences against the administration of justice in connection with the ICC.

## Singapore

The *Geneva Conventions (Amendment) Act* No. 55 of 2007<sup>12</sup> was adopted on 12 November 2007 and entered into force on 15 January 2008. The act amends the Geneva Conventions Act to give effect to Protocol III additional to the Geneva Conventions of 12 August 1949 and relating to the Adoption of an Additional Distinctive Emblem. The act includes definitions of the red cross, red crescent, red lion and sun “and red crystal” emblems and prohibits unauthorized use of these emblems and of the names ‘red cross’ or ‘Geneva cross’.

## Slovakia

*Law No. 218 on the Prohibition of Biological Weapons and on Amendments and Supplements to Certain Acts* was adopted on 28 March 2007 and entered into force on 1 June 2007. The law complements existing Slovak legislation implementing the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction. The law establishes a new legal and administrative framework for the surveillance of relevant biological agents with a view to preventing their use for activities prohibited by the Convention. In particular, the law specifies high-risk biological agents and toxins that have the potential of being used contrary to the Convention and regulates the rights and duties of individuals, natural-person entrepreneurs and legal entities with regard to the prohibitions on

11 An Act to enable Samoa to implement and give effect to its obligations under the Rome Statute of the International Criminal Court, and for related matters. Available at [www.parliament.gov.ws/documents/acts/International%20Criminal%20Court%20Act%202007%20-%20%20English%20Version.pdf](http://www.parliament.gov.ws/documents/acts/International%20Criminal%20Court%20Act%202007%20-%20%20English%20Version.pdf).

12 An Act to amend the Geneva Conventions Act (Chapter 117 of the 1985 Revised Edition) and to make consequential and miscellaneous amendments to the Singapore Red Cross Society (Incorporation) Act (Chapter 304 of the 1985 Revised Edition). Officially published in GN No. S6/2008.

biological weapons. The act confirms the function of the Ministry of Health as the national authority in charge of overall supervision of compliance with the prohibition on biological weapons. The law further establishes the conditions for the handling of highly hazardous biological agents and toxins and for the granting of licences, and makes provision for penal and administrative sanctions in the event of breaches of the prohibitions under the act.

## South Africa

The *South African Red Cross Society and Legal Protection of Certain Emblems Act*<sup>13</sup> was adopted on 9 August 2007 and entered into force on 16 August 2007. The act provides statutory recognition for the South African Red Cross Society. It restates the Society's goals in its work to prevent and alleviate suffering and to foster human dignity in all communities in accordance with the Geneva Conventions of 1949 and pursuant to its Constitution, and confirms the entitlement of the Society, if so requested, to place its medical personnel and resources at the disposal of the state. The act further regulates the uses and the protection of the red cross and red crescent emblems and provides for both criminal and administrative penalties in the event of misuse of the distinctive emblems by any person or by corporate bodies.

## Spain

*Law No. 52/2007 to Recognize and Broaden Rights and to Establish Measures in Favour of those who Suffered Persecution or Violence during the Civil War and the Dictatorship*<sup>14</sup> was adopted on 26 December 2007 and entered into force on 28 December 2007. The law recognizes and implements the right to rehabilitation, individual recognition and reparations for persons who suffered persecution or violence on political, religious or ideological grounds during the Spanish Civil War and the military dictatorship. The law declares the illegitimacy of the courts and of any other criminal or administrative organs established during the Civil War or during the dictatorship to impose sentences and sanctions for ideological, political or religious motives. The law recognizes the right of victims of the Civil War and of the dictatorship and of their relatives to obtain a declaration of reparations and individual recognition to be decided upon by an independent Council. It also provides for compensation and increased benefits for the relatives of Spanish nationals who died during the Civil War and of persons detained during the dictatorship. Lastly, the law instructs the relevant public authorities to facilitate the

13 Act No. 10. An Act to provide statutory recognition for the South African Red Cross Society and to provide statutory protection for certain emblems; and to provide for matters connected therewith. Officially published on 16 August 2007 in the *Government Gazette*, No. 30178, Vol. 506.

14 Ley 52/2007 de 26 de diciembre, por la que se reconocen y amplían derechos y se establecen medidas en favor de quienes padecieron persecución o violencia durante la guerra civil y la dictadura. Published on 27 December 2007 in the *Boletín Oficial del Estado* (BOE), No. 310, available at [www.boe.es/g/es/](http://www.boe.es/g/es/).

location and identification of persons unaccounted for as a result of the Civil War and the dictatorship, as well as the recovery and reburial of human remains by the families.

## Sudan

The *Armed Forces Act of 2007*<sup>15</sup> was adopted on 17 December 2007 by the National Council of Sudan. The act defines the status of members of the armed forces and affiliated persons and personnel, and provides for the establishment and operation of a system of military criminal justice and military jurisdictions. The act stipulates that military courts are competent to judge crimes committed by members of the armed forces in the course of their duties. It criminalizes a wide range of offences committed during or in the aftermath of military operations, including crimes against persons enjoying special protection and prisoners of war, attacks against civilians or protected objects, attacks against humanitarian and international organizations, perfidious use of the flag of truce or of internationally protected emblems, as well as the use of prohibited weapons. The act provides for the jurisdiction of Sudanese military courts over such crimes on the basis of universal jurisdiction, subject to the presence of the alleged perpetrator in Sudan.

## United States

The *Consolidated Appropriations Act, 2008*<sup>16</sup> was adopted on 26 December 2007. Section 646 of the act covers landmines and cluster munitions. It places a one-year moratorium, for the period of the current fiscal year, on furnishing military assistance for cluster munitions and on the granting of defence-export licences for the sale or transfer of cluster munitions and related technology. The moratorium is not applicable to cluster munitions enjoying a 99 per cent or higher tested rate and when the agreement on assistance, transfer or sale of cluster munitions or cluster munitions technology specifies that the cluster munitions will only be used against clearly defined military targets and will not be used where civilians are known to be present.

The Executive Order on the Interpretation of the Geneva Conventions Common Article 3 as Applied to a Program of Detention and Interrogation Operated by the Central Intelligence Agency<sup>17</sup> was issued by President George W. Bush on 20 July 2007. The executive order reaffirms the determination that members of Al Qaeda, the Taliban and associated forces are 'unlawful enemy combatants' and, as such,

15 The Armed Forces Act of 2007 was adopted by the National Council of Sudan by virtue of the Transitional Constitution of the Republic of Sudan of 2005.

16 Consolidated Appropriations Act, 2008. An Act making appropriations for the Department of State, foreign operations, and related programs for the fiscal year ending 30 September 2008, and for other purposes. HR 2764, available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:h.r.02764>.

17 Available at [www.whitehouse.gov/news/releases/2007/07/20070720-4.html](http://www.whitehouse.gov/news/releases/2007/07/20070720-4.html).



are not entitled to the protection afforded prisoners of war under the Third Geneva Convention of 1949. In connection with Common Article 3 of the Geneva Conventions, the order establishes that it is authoritative for all purposes as a matter of US law and determines that interrogation and detention programmes operated by the Central Intelligence Agency (CIA) must fully comply with the obligations of the United States under Common Article 3, and do so provided that they do not include acts considered comparable to, *inter alia*, murder, torture, mutilation or cruel or inhuman treatment. In addition, the order stipulates that foreign detainees will be subject to the conditions of confinement and interrogation practices outlined in the act if the CIA director determines that they are members of or support Al Qaeda, the Taliban or associated organizations and are likely to have information that would help in locating other such members or in preventing terrorist attacks. Lastly, the order instructs the Director of the CIA to issue instructions relating to the interrogation programmes, including training for interrogators.

## **B. National committees on international humanitarian law**

### **People's Republic of China**

The *Chinese Inter-ministerial Committee for International Humanitarian Law* was established by decision of the Chinese government on 24 November 2007. The Committee's mandate is to promote knowledge of IHL, to support the adoption of national measures to implement that law and to promote thematic research and international co-operation in this field. The posts of committee chairman and secretary are held by the Red Cross Society of China. The Committee is composed of representatives of the ministries of Foreign Affairs, Defence, Education, Justice and Administration of Cultural Heritage, as well as of the People's Liberation Army and of the Red Cross Society of China.

### **Ecuador**

The *Ecuadorian National Committee for the Application of International Humanitarian Law*<sup>18</sup> was created by Executive Decree No. 1741, issued by the President on 16 August 2006, and was established on 9 March 2007 by Ministerial Agreement No. 0000074, issued by the Ministry of Foreign Affairs. The Committee's tasks are to promote accession to IHL instruments, to prepare draft laws, regulations and instructions for the national implementation of IHL, and to promote the incorporation of IHL at all levels of military training and civilian education. The Committee is also entrusted with the development and co-ordination of a 'national plan of action' to ensure the promotion and effective application of IHL and with promoting co-operation between the government and

18 Comisión Nacional para la aplicación del Derecho Internacional Humanitario.

interested international organizations in order to strengthen respect for IHL. The Committee chairmanship is held by the Ministry of Foreign Affairs and the secretariat by the Ecuadorean Red Cross. The Committee is composed of representatives of the ministries of Foreign Affairs, Commerce and Integration, National Defence, Police and Local Government, and Social Welfare, as well as by the Congressional Commissions for Legislation and Codification and for Human Rights, the Supreme Court of Justice and the Ecuadorean Red Cross.

## Iceland

The *Icelandic National Committee on International Humanitarian Law* was established on 24 October 2007 by decision of the Ministry of Foreign Affairs. The Committee's mandate is to advise the government on the interpretation, national implementation and promotion of IHL. The Committee is chaired by the Ministry of Foreign Affairs and composed of representatives of the ministries of Foreign Affairs, Justice, Education, Health and Social Affairs, and of the Icelandic Red Cross.

## Malaysia

The *Malaysian National International Humanitarian Law Committee*<sup>19</sup> was established pursuant to a decision of the Cabinet issued in December 2007. The Committee's mandate is to oversee the national implementation of IHL and to promote knowledge of that law and related obligations among the general public. The Committee must take the necessary steps to ensure that Malaysia respects its obligations under the 1949 Geneva Conventions and the Malaysian Geneva Conventions Act of 1962. The Committee also determines the responsibilities of government agencies in the implementation and application of IHL in the event of armed conflict. The Ministry of Foreign Affairs provides the Committee's chairman and secretary. The Committee is composed of representatives of the ministries of Defence, Home Affairs, Information, Women, Family and Community Development, Culture, and Arts and Heritage, as well as of the Attorney General's office, the armed forces and the police.

## Nepal

The *Nepalese National Committee for the Implementation of International Humanitarian Law* was established on 26 February 2007 by a decision of the government of Nepal. The Committee's mandate is to support the development of national legislation in implementation of IHL treaties to which Nepal is party and to review existing law. The Committee conducts activities aimed at promoting knowledge in the field of IHL. The posts of chairman and secretary are held by the

<sup>19</sup> Jawatankuasa Undang-undang Kemanusiaan Antarabangsa Malaysia (JUKAM).

Ministry for Law, Justice and Parliamentary Affairs. The Committee is composed of representatives of the Office of the Prime Minister and of the Council of Ministers, as well as of the ministries for Law, Justice and Parliamentary Affairs, Foreign Affairs, Defence, Home Affairs, Health and Population, Education and Sports, Culture, Tourism and Civilian Aviation, and Women, Children and Social Welfare.

## Spain

The *Spanish National Committee on International Humanitarian Law* was established by Royal Decree 1513/2007 of 16 November 2007.<sup>20</sup> The Committee's mandate is to advise the Spanish government on the ratification and national implementation of IHL treaties, including proposals for new legislation, recommendations on the promotion of IHL and the training of armed and security forces and public servants, and initiatives to support and promote the application of IHL in other states. The Committee must also prepare Spain's participation in the International Conference of the Red Cross and Red Crescent and act as a permanent link with national Red Cross and Red Crescent societies and the ICRC. The Committee is composed of representatives of the ministries of Foreign Affairs and Co-operation, Justice, Defence, Interior, Economy, Education and Science, Labour and Social Affairs, Public Administration, Culture, Health and the Environment, as well as of the Attorney General's Office, and members of the autonomous communities, independent experts and the Spanish Red Cross. The Committee is chaired by the Ministry of Foreign Affairs and Co-operation.

## C. Case law

### Bosnia and Herzegovina

#### *Court of Bosnia and Herzegovina, case of Momčilo Mandić*<sup>21</sup>

On 18 July 2007 the Court of Bosnia and Herzegovina rendered a first-instance verdict acquitting the accused of war crimes against civilians and crimes against humanity alleged to have been committed in April 1992. Mandić had been charged with having, in his capacity as Republika Srpska's deputy minister of the interior, planned and ordered an attack against a training centre of the Ministry of the Interior of the Republic of Bosnia and Herzegovina, and of having incited and

20 Real Decreto 1513/2007 de 16 Noviembre, por el cual se crea y regula la Comisión Española de Derecho Internacional Humanitario, adopted on 16 November 2007 and officially published in the *Boletín Oficial del Estado*, No. 283, on 26 November 2007, available at [www.boe.es/boe/dias/2007/11/26/pdfs/A48303-48305.pdf](http://www.boe.es/boe/dias/2007/11/26/pdfs/A48303-48305.pdf). Entered into force on 27 November 2007.

21 Court of Bosnia and Herzegovina, *Momčilo Mandić*, No. X-KR-05/58, 18 July 2007, available at [www.sudbih.gov.ba/files/docs/presude/2007/Momcilo\\_Mandic\\_-\\_VERDICT\\_-\\_ENG.pdf](http://www.sudbih.gov.ba/files/docs/presude/2007/Momcilo_Mandic_-_VERDICT_-_ENG.pdf).

aided in the subsequent inhumane treatment of the centre's staff. The court found that it had not been established that on the date of the attack, the accused had held, whether *de jure* or *de facto*, the office of deputy minister of the interior, or that he had acted as a superior over the members of the police who had detained, interrogated and physically abused the victims. The court also concluded that at the time of the attack, on 4 April 1992, there was not yet an armed conflict within the meaning of Article 3 common to the 1949 Geneva Conventions, the panel having accepted as proven the fact that the armed conflict broke out after Republika Srpska was recognized on 6 April 1992.

Mandić was also acquitted of crimes against humanity. In his capacity as minister of justice of Republika Srpska, he was charged with personal and command responsibility for crimes committed in the correctional institutions under the control of Republika Srpska. The trial panel concluded that it had not been proved beyond a reasonable doubt that he had personally committed the criminal offences he was directly charged with, nor that he had exercised effective control over the subordinates who committed the offences or were about to commit them.

### *Court of Bosnia and Herzegovina, case of Krešo Lučić<sup>22</sup>*

On 19 September 2007 a trial panel of the War Crimes Section of the Court of Bosnia and Herzegovina sentenced a local commander of the Croat Defence Council Military Police to six years' imprisonment for crimes against humanity, including unlawful deprivation of liberty, torture and other inhumane acts committed against Bosniak civilians. In establishing the constituent elements of the crimes, the court referred to Article 1 common to the 1949 Geneva Conventions and the absolute obligation to 'respect and ensure respect for the present Convention in all circumstances' without any condition of reciprocity. The court held the view that the unlawful behaviour of the party under attack had no relevance to the existence of a widespread and systematic attack against any civilian population as a constituent element of crimes against humanity.

In the course of the trial the panel decided *ex officio* to refuse a motion calling on a representative of the International Committee of the Red Cross to be examined as a witness given the nature of his activities as an ICRC delegate during the armed conflict. The panel determined that introducing confidential ICRC information into the court's proceedings, without prior consent from the organization, would seriously jeopardize the role of the Red Cross and its ability to carry out its mandate under international law.

22 Court of Bosnia and Herzegovina, *Krešo Lučić*, No. X-KR-05/68, 19 September 2007, available at [www.sudbih.gov.ba/files/docs/presude/2007/Kreso\\_Lucic\\_-\\_Verdict\\_-\\_redigovana.pdf](http://www.sudbih.gov.ba/files/docs/presude/2007/Kreso_Lucic_-_Verdict_-_redigovana.pdf).

*Court of Bosnia and Herzegovina, Panel of the Appellate Division, case of Niset Ramić*<sup>23</sup>

On 21 November 2007 the Appellate Panel of the War Crimes Section of the Court of Bosnia and Herzegovina upheld a verdict of the trial panel of 17 July 2007, in which a member of the Territorial Defence of the Republic of Bosnia and Herzegovina received a compound sentence of 30 years' imprisonment for war crimes committed against civilians, including murder and serious injury to physical integrity. The Appellate Panel rejected the objections of the defence according to which the first instance verdict had incorrectly or incompletely established the facts. It also held that the admission of certain facts from the description of the criminal offence by the accused did not carry the same weight as a full admission and could thus not be considered for the purpose of mitigation of punishment.

Moldova

*Resolution No. 22 of the Constitutional Court of the Republic of Moldova on the constitutionality of the Rome Statute of the International Criminal Court, 2 October 2007*<sup>24</sup>

Having signed the Rome Statute of the International Criminal Court on 8 September 2000, the government of the Republic of Moldova asked the Constitutional Court in July 2007 to verify the compatibility of several articles of the Statute with Moldova's constitution. The court held that, since it would not substitute for the national criminal justice system in the investigation and prosecution of the most serious crimes, the ICC could not be considered an extraordinary jurisdiction falling under the constitutional prohibition on 'special tribunals'. The Constitutional Court further examined the compatibility of the Rome Statute with the constitutional immunities enjoyed by Moldova's President, members of parliament and judges. It held that the domestic immunities of public officials concerned only acts committed in the course of their official duties and could not be interpreted as an absolute right exempting public officials from prosecution and punishment by the ICC. Finally, the court reviewed the compatibility of the constitutional ban on the extradition of Moldovan nationals with the state's obligations under the Rome Statute to surrender suspects to the ICC. The court concluded that the procedures for extradition to another state and of surrender to the ICC were distinct and could not be placed in the same category.

23 Court of Bosnia and Herzegovina, *Niset Ramić*, No. X-KRŽ-06/197, 21 November 2007, and No. X-KR-06/197, 17 July 2007, available at [www.sudbih.gov.ba/?opcija=predmeti&id=34&završen=1&jezik=e](http://www.sudbih.gov.ba/?opcija=predmeti&id=34&završen=1&jezik=e).

24 Resolution No. 22, Acts of the Constitutional Court of the Republic of Moldova, N°161-164 (3048-3051). Officially published on 12 October 2007 in *Monitorul Oficial al Republicii Moldova*.

In conclusion, the Constitutional Court issued a resolution declaring the Rome Statute to be compatible with Moldova's constitution.

## Nepal

*Nepal Supreme Court, Rabindra Prasad Dhakal on behalf of Rajendra Prasad Dhakal (Advocate) v. Nepal Government, Home Ministry and Others, 1 June 2007*<sup>25</sup>

This case concerns several petitions for a writ of habeas corpus filed with the Nepalese Supreme Court on behalf of persons allegedly arrested between 1999 and 2004 by Nepalese security forces and unaccounted for since their arrest. The questions drawn to the court's attention concerned the health and safety of the persons referred to in the petitions and to the nature of the obligations of the state in matters relating to persons who have disappeared or are unaccounted for, in particular during an armed conflict.

In its decision, after recognizing that the status and whereabouts of the missing persons remained unknown, the court analysed the international obligations binding on the state with regard to clarifying what has happened to missing persons and concerning the right of the missing and of their relatives to appropriate remedy and relief. In its determination, the court made reference to the International Convention for the Protection of All Persons from Enforced Disappearance, which, although not ratified by Nepal, sets a 'fundamental standard' no different from those laid down in international human rights instruments to which Nepal is party, such as the UN Covenant on Civil and Political Rights. It also concluded that civil liberties protected under the constitution are at greater risk during an armed conflict and that the liability and responsibility of the state to address violations of human rights and international humanitarian law should therefore be greater in such unusual circumstances. This should entail in particular a greater commitment on the part of the state to identifying the fate of missing persons, to initiating legal action against those responsible and to providing the victims with a remedy.

In the case at hand the court found that no serious efforts had been made by the government either to investigate the alleged disappearances, to improve or strengthen the domestic legal framework or to provide relief and remedy to the victims' families. As a result, the court issued several orders to the government of Nepal to adopt new legislation in order both to define enforced disappearance as a criminal offence and to provide for the right of detained persons to humane treatment and fundamental guarantees, as well as to establish a commission of

25 Nepal Supreme Court, *Rabindra Prasad Dhakal on behalf of Rajendra Prasad Dhakal (Advocate) v. Nepal Government, Home Ministry and Others*, Writ No. 3775, 1 June 2007, available at [www.supreme-court.gov.np/nja/disappearance\\_Case.pdf](http://www.supreme-court.gov.np/nja/disappearance_Case.pdf).

inquiry into the disappearance of the victims on whose behalf the petitions had been brought.

## Norway

### *Oslo District Court, Sentence of 9 February 2007*<sup>26</sup>

The case concerned a dental clinic in Oslo which had been using a sign composed of a red cross on a white background to mark its offices. In 2004 the Norwegian Red Cross, which had been made aware of this misuse of the red cross emblem, took the initiative of alerting the clinic and of calling for the removal of the sign. At the end of 2004 the Norwegian Red Cross reported this misuse of the emblem to the Norwegian armed forces and the matter was brought to the Oslo District Court. The court convicted the defendant of breaching the Norwegian Criminal Code and its prohibition on the unlawful use of any sign or name designed to be used in connection with aiding the wounded and sick in time of armed conflict. The court emphasized that Norway is a state party to the Geneva Conventions and their Additional Protocols, which protect the emblem of the red cross on a white background. It recalled that the purpose of the red cross emblem is to provide protection in armed conflict and that its misuse in peacetime could undermine respect for it in wartime. The defendant was sentenced to a fine and to bearing the legal costs.

## United States

### *Military Commission Order on Jurisdiction, United States of America v. Omar Ahmed Khadr,*<sup>27</sup> 4 June 2007

On 4 June 2007 a military commission dismissed the charges against Omar Ahmed Khadr. The judges determined that a military commission was not the proper authority to determine whether the accused was an ‘unlawful enemy combatant’ for the purpose of establishing initial jurisdiction for the commission to try him. The judges held that military commissions were, under the Military Commissions Act of 2006, courts of limited jurisdiction and that they could exercise jurisdiction over ‘unlawful enemy combatants’ only subsequent to a prior determination by a combatant status review tribunal (or other competent jurisdiction) on the status of such persons. It was only once such a determination had been made that the provisions of the Military Commissions Act came into play and that a person could be charged and referred for trial to a military commission.

26 Case No. 07-002291MED-OTIR/02, 9 February 2007.

27 Military Commission Order on Jurisdiction, *United States of America v. Omar Ahmed Khadr a/k/a ‘Akhbar Farhad’ a/k/a ‘Akhbar Farnad,’ a/k/a ‘Ahmed Muhammed Khahi’*, 4 June 2007, available at [www.icj.org/IMG/Khadr\\_Order.pdf](http://www.icj.org/IMG/Khadr_Order.pdf).

*United States Court of Appeals for the Fourth Circuit, Ali Saleh Kahlah al-Marri, Petitioner – Appellant v. Commander S. L. Wright, USN Commander, Respondent, 11 June 2007*<sup>28</sup>

The case concerned a citizen of Qatar who had entered the United States lawfully with his wife and children on 10 September 2001 and had been arrested as a material witness in the government's investigation of the September 11 attacks. By order of the President of the United States, the appellant had subsequently been determined to be an 'enemy combatant' and detained without charges since that time.

Following the dismissal of successive petitions for habeas corpus brought by the appellant, an appeal was filed on his behalf in 2006 before the Court of Appeals for the Fourth Circuit. The government sought to dismiss the case for lack of jurisdiction, arguing that Section 7 of the Military Commissions Act of 2006 stripped courts of jurisdiction to consider an application for a writ of habeas corpus filed by or on behalf of an alien who had been detained by the United States and had been determined to be properly detained as an 'enemy combatant' or was awaiting such determination.

On 11 June 2007 the Court of Appeals decided, contrary to the government's assertion, that the Military Commissions Act did not deny the appellant his constitutional rights and affirmed jurisdiction to consider his petition. It concluded that the appellant should be granted habeas corpus relief as guaranteed by the US constitution. In its ruling, the Court of Appeals reviewed the Authorization for Use of Military Force Statute and the *Hamdi* and *Padilla* rulings which, according to the US government, had provided the legal background to ordering the appellant's indefinite detention as an 'enemy combatant'. The court found no authority to conclude that the Authorization for Use of Military Force Statute had empowered the President to detain the appellant as an 'enemy combatant'. The court determined instead that he was a civilian who did not lose his civilian status even if he had committed serious crimes and been associated with a secret enemy organization engaged in hostilities against the United States. In addition, the President did not have the authority to suspend the appellant's protection under the constitution, irrespective of his status as an 'enemy combatant'.

The Court of Appeals remanded the case to the District Court with instructions to issue a writ of habeas corpus directing the Secretary of Defence to release the appellant from military custody within a reasonable period of time.

28 United States Court of Appeals for the Fourth Circuit, *Ali Saleh Kahlah al-Marri, Petitioner – Appellant, and Mark A. Berman, as next friend, Petitioner, v. Commander S. L. Wright, USN Commander, Consolidated Naval Brig., Respondent*, No. 06-7427, argued 1 February 2007, decided 11 June 2007. Available at <http://pacer.ca4.uscourts.gov/opinion.pdf/067427.P.pdf>.



*United States Court of Appeals for the District of Columbia Circuit, Haji Bismullah, Petitioner v. Robert M. Gates, Secretary of Defense, Respondent,*<sup>29</sup> 20 July 2007

The case concerned petitions brought by non-US nationals captured abroad and detained at the US naval base at Guantánamo Bay. The petitioners sought review of the determination made by a combatant status review tribunal that they were ‘enemy combatants’ and therefore subject to indefinite detention. Both the petitioners and the government asked the Court of Appeals to enter protective orders to address the issue of access to and review of the information and evidence to be considered by the court in its examination of the detainees’ petitions. The petitioners argued that – in addition to the inculpatory and exculpatory evidence presented to the tribunal by the recorder of proceedings, the detainee and the detainee’s representative – the court should review all the evidence reasonably available to the government. The government argued that the record should be limited to the evidence presented by the recorder.

In its ruling the Court of Appeals emphasized that the Detainee Treatment Act required it to review whether the tribunal’s status determination was supported by a preponderance of evidence. The court concluded that in order for it to ascertain whether a preponderance of evidence justified the tribunal’s determination that an alien detained in Guantánamo Bay was an ‘enemy combatant’, it needed to have access to all the information available to the government. The court entered a protective order adopting the presumption that the counsel for the petitioners had a ‘need to know’ all government information concerning his client’s case, with the exception of highly sensitive information which the government could withhold from the petitioners’ counsel. The Court of Appeals also granted the government’s motion for a protective order allowing it both to inspect the correspondence exchanged between the detainee and his counsel and to remove from it any content unrelated to the detainee’s capture and proceedings before the Combatant Status Review Tribunal.

*United States Court of Military Commission Review, United States of America v. Omar Ahmed Khadr,*<sup>30</sup> 24 September 2007

On 24 September 2007 the Court of Military Commission Review reversed the military commission order on jurisdiction issued in the *Omar Ahmed Khadr*

29 United States Court of Appeals for the District of Columbia Circuit, *Haji Bismullah a/k/a Haji Bismillah, and a/k/a Haji Besmella, Haji Mohammad Wali, Next Friend of Haji Bismullah, Petitioners v. Robert M. Gates, Secretary of Defense, Respondent*, No. 06-1197, argued 15 May 2007 and decided 20 July 2007. This case was decided together with *Huzaiifa Parhat, et al., Petitioners v. Robert M. Gates, Secretary of Defense, et al., Respondents*, No. 06-1397. Available at <http://caselaw.lp.findlaw.com/data2/circs/dc/061197a.pdf>.

30 United States Court of Military Commission Review, *United States of America v. Omar Ahmed Khadr*, 24 September 2007, available at [www.defenselink.mil/news/Sep2007/Khadr%20USCMCR%20Order%20RE%20Abatement%20\(24%20Sept%2007\)%20\(6%20pages\).pdf](http://www.defenselink.mil/news/Sep2007/Khadr%20USCMCR%20Order%20RE%20Abatement%20(24%20Sept%2007)%20(6%20pages).pdf).

case.<sup>31</sup> It determined that the military commission had erred in deciding that a prior determination by a combatant status review tribunal on the status of a person as an ‘enemy combatant’ is a prerequisite for the referral of charges to a military commission. The Court held that the language of the Military Commissions Act of 2006 (MCA), together with clear precedents on the issue of establishing jurisdiction in federal courts, is proof that a military commission possesses the independent authority to decide on this jurisdictional prerequisite. The court determined that the text, structure and history of the MCA clearly demonstrate that a military judge presiding over a military commission may decide on both the factual issue of an accused’s ‘unlawful enemy combatant’ status and the corresponding legal issue of the military commission’s *in personam* jurisdiction. The court concluded that a military commission may exercise jurisdiction where ‘enemy combatant’ status is established by a preponderance of evidence, and ordered the military commission to conduct all proceedings needed to determine its jurisdiction over the accused.<sup>32</sup>

31 See above, note 27.

32 On 6 November 2007 the US Court of Appeal for the District of Columbia Circuit rejected an appeal from Omar Ahmed Khadr, thus confirming the decision of the Court of Military Commission Review which had reinstated the charges against him.