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REPORTS AND DOCUMENTS

National implementation of international humanitarian law

Biannual update on national legislation and case law

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A. Legislation

Bangladesh

The International Crimes (Tribunals) (Amendment) Act, 2009

An amendment to the 1973 Bangladesh International Crimes (Tribunals) Act was adopted on 14 July 2009,[1] inserting modifications into the original Act's provisions on, *inter alia*, jurisdiction and the right to appeal. Regarding the former, the Act now provides that a tribunal shall have the power to try and punish any individual, irrespective of his or her nationality, who commits or has committed in the territory of Bangladesh crimes against humanity, crimes against peace, genocide, war crimes, violations of any humanitarian rules applicable in armed conflict laid down in the Geneva Conventions of 1949, and any other crimes under international law as defined in the Act. In relation to war crimes, the Act expressly lists murder, ill-treatment or deportation to slave labour, killing of hostages, wanton destruction of cities, towns, or villages, and other actions not justified by military necessity.[2] The crimes would be prosecutable when committed before or after the commencement of the 1973 Act.[3]

With regards to the right of appeal, the amendment provides that both the Government and any person convicted of any crime falling under the jurisdiction of the Tribunal have the right to appeal to the Appellate Division of the Supreme Court of Bangladesh against a conviction or order of acquittal.

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Bosnia and Herzegovina

Law on Implementation of the Rome Statute of the International Criminal Court and Cooperation with the International Criminal Court, 19 October 2009

A law addressing issues of 'cooperation and provision of legal assistance to the International Criminal Court as well as specific characteristics of the procedure referring to criminal offences under Article 5 of the Rome Statute' was adopted by the Parliamentary Assembly of Bosnia and Herzegovina on 19 October 2009.[4] The law also refers to 'criminal offences against humanity and other values protected by international law regulated by the Criminal Code of Bosnia and Herzegovina',[5] namely, genocide, crimes against humanity, war crimes, and aggression, as defined in the International Criminial Court (ICC) Statute.

On the issue of complementarity, the law provides that the Prosecutor's Office and the Court of Bosnia and Herzegovina shall have jurisdiction[6] to conduct the criminal proceedings against alleged perpetrators of criminal offences under the Law. The ICC, however, would obtain jurisdiction to conduct criminal proceedings against the perpetrators of criminal offences 'provided that the requirements under Article 17 of the Rome Statute have been met'.[7]

Regarding co-operation, the law provides that all State authorities shall cooperate fully with and provide legal assistance in a *bona fide* way to the ICC. It also states that Bosnia and Herzegovina shall accept the transfer of persons convicted and sentenced by the ICC in accordance with agreements to be concluded for each individual case.

Burkina Faso

Law Regarding the Competences and Procedures Required for the Implementation of the Rome Statute of the International Criminal Court by National Courts (No. 52), 31 December 2009

Law No. 52-2009 regarding the national implementation of the ICC Statute was adopted on 31 December 2009.[8] It provides for national courts to exercise criminal jurisdiction over genocide, crimes against humanity, and war crimes, including

1 *The International Crimes (Tribunals) (Amendment) Act, 2009* (Act No. LV of 2009).
2 *The International Crimes (Tribunals) Act, 1973*, Art. 3(d), as amended.
3 *Ibid.*, Art. 3(1).
4 *Law on Implementation of the Rome Statute of the International Criminal Court and Cooperation with the International Criminal Court*, passed by the House of Representatives on 30 September 2009, followed by the House of Peoples on 19 October 2009.
5 *Ibid.*, Art. 1.
6 *Ibid.*, Art. 3(5).
7 *Ibid.*, Art. 9(2).
8 Decree N. 2009, 894/PRES, promulgating Law No. 052-2009/AN, 31 December 2009.

grave breaches of the 1949 Geneva Conventions; violations of international humanitarian law (IHL) committed in international armed conflicts such as, *inter alia*, directing attacks against the civilian population and intentionally directing attacks against buildings dedicated to religion, education, art, or science and other cultural property; violations of Article 3 common to the 1949 Geneva Conventions; and other violations of IHL committed in non-international armed conflicts.[9]

The law also emphasizes national courts' primacy of jurisdiction over the ICC, thus reaffirming the principle of complementarity.[10] Different forms of criminal responsibility are penalized, such as complicity, ordering, inciting, and aiding and abetting, and under given circumstances even the attempt to commit certain offences. The defence of 'superior orders', as in the Statute, would be accepted in court under strict conditions, among them that the order was not manifestly illegal. Orders involving genocide or crimes against humanity would always be considered manifestly illegal. Article 7 establishes that no distinction shall be made in the exercise of jurisdiction regarding government officials, including the head of state, thus rejecting the possibility of immunities.

Article 9 of the law refers to grounds for exclusion of criminal responsibility, such as self-defence and duress. The law also provides for a number of judicial guarantees, including *ne bis in idem*[11] and the right to not testify against oneself. Finally, it establishes the available penalties for all offences, including fifteen to thirty years' imprisonment, a monetary fine, and confiscation of property.

Ecuador

Law Amending the Penal Code for the Penalisation of Offences Committed during Military and Police Service, Official Register No. 196, 19 May 2010

A Law amending the Penal Code regarding military and police offences was adopted on 10 May 2010,[12] and entered into force nine days later upon publication in the Official Register. Though inserted into the civil Penal Code, its provisions only apply to acts and omissions committed by police or military officers, members of the reserve forces incorporated into active service, or civilians carrying out voluntary military service.[13]

Besides some common military crimes such as insubordination, sedition, or false alarm,[14] the amendment added into the Penal Code a specific chapter on

9 *Ibid.*, Art. 19.
10 *Ibid.*, Art. 2.
11 *Ibid.*, Art. 5.
12 *Ley reformatoria al Código Penal para la Tipificación de los Delitos cometidos en el Servicio Militar Policial* (Registro Oficial No. 196, de 19 de mayo de 2010).
13 Article 114.3 of the Penal Code, as amended.
14 *Ibid.*, Arts. 602.3, 602.4, and 602.7, respectively.

offences against persons and property protected by IHL, specifically Chapter IV, Articles 602.37 and following. The law provides a definition of protected persons, covering, *inter alia*, the civilian population, those no longer participating in hostilities, sanitary and religious personnel, and any others holding such status under the four 1949 Geneva Conventions and their Additional Protocols. As for the crimes listed, the Penal Code now includes homicide of protected person, torture of protected person, collective punishment, mutilations, denying judicial guarantees to protected persons, failing to provide help and humanitarian assistance, recruiting children, attacking protected property including civilian objects not military objectives, employing prohibited methods of warfare, and prohibited weapons, including anti-personnel mines and cluster munitions.[15] The unlawful use of the protective emblems and signs, together with simulating being a protected person (a form of perfidy), is also penalized.

The offences as provided may be committed in times of peace or during either an international or non-international armed conflict, as stated in Article 114.4. The law allows for findings of responsibility for commanders for the orders they give, as well as for the consequences arising from omissions in the fulfilment of their duties. According to Article 114.7, superior orders are not allowed as a defence from individual criminal responsibility for the executor. The law also establishes that actions and penalties for the crimes of genocide, crimes against humanity, war crimes, enforced disappearances, torture, or the crime of aggression shall not be subject to statutes of limitations.[16]

With regards to jurisdictional matters, the law establishes that the above military offences now fall under civilian courts. The amendment as adopted derogated both the Police and Military Penal Codes, and should prevail against any other law contradicting its provisions.

United Kingdom

Cluster Munitions (Prohibitions) Act 2010

The United Kingdom (UK) enacted the Cluster Munitions (Prohibitions) Act 2010[17] on 25 March 2010, incorporating the prohibitions and other provisions from the Convention into domestic law. After defining the type of munitions falling under the scope of the law,[18] Section 2 makes the use, development or production, acquisition, possession, or transfer of prohibited munitions, and making arrangements for another person to acquire or transfer prohibited munitions, a punishable offence with up to fourteen years' imprisonment, a fine, or both. The offence may be punishable if committed in the UK or elsewhere, provided that it is committed by a UK national, a Scottish partnership, or a body

15 *Ibid.*, Art. 602.58, paras. 10 and 11, respectively.
16 *Ibid.*, Art. 114.8.
17 *Cluster Munitions (Prohibitions) Act* (c.11), 25 March 2010.
18 *Ibid.*, Section 1.

incorporated under the law of the UK.[19] The Act allows as defences against a charge under Section 2, *inter alia*, to show that the accused carried out the prohibited conduct with the intention of destroying the prohibited munitions, or with the intention that the munitions only be used for permitted purposes, as allowed for in the Convention.[20]

The Act also nominates the responsible authority for, and provides for the procedure on, the seizure and destruction of prohibited munitions. According to Sections 12(1) and (2), the secretary of state may authorize a person to enter and search premises should there be reasonable cause to believe that, first, prohibited munitions would be found; second, the person in possession of such prohibited munitions would not have a defence under Section 5 or 6; and third, that the premises are publicly accessible.

United States

Military Commissions Act of 2009

A Military Commissions Act of 2009, amending some of the provisions of the 2006 Act, was signed on 28 October 2009.[21] While keeping the basic structure of existing military commissions unaltered, the 2009 Act replaces the term 'unlawful enemy combatant' with that of 'unprivileged enemy belligerent' and lists three alternative criteria under which a person would be qualified as such: the person in question

> a) has engaged in hostilities against the United States or its coalition partners; b) has purposefully and materially supported hostilities against the United States or its coalition partners; or c) was a part of *Al Qaeda* at the time of the alleged offence under this chapter.[22]

The amendment also provides for increased judicial guarantees. In particular, Section 948r establishes that no statement obtained by the use of torture or cruel, inhuman, or degrading treatment, whether or not 'under color of law'[23] and as defined in Section 1003 of the Detainee Treatment Act of 2005, would be admissible in a military commission. Also, the Act provides the right of defendants to attend their entire trial and examine all evidence presented against them, to cross-examine witnesses, and to call their own witnesses. Military prosecutors are required to disclose the existence of any exculpatory evidence, as well as any evidence that might impeach the credibility of a government witness. Finally, the new law makes it possible to appeal to the US Court of Military Commission Review, the federal appeals court in Washington, and the US Supreme Court.[24]

19 *Ibid.*, Section 4(3).
20 *Ibid.*, Sections 5 and 6, respectively.
21 Military Commissions Act of 2009 (amending some of the provisions of Military Commissions Act of 2006), Public Law 111-84, 28 October 2009.
22 *Ibid.*, Section 948a(7).
23 *Ibid.*, Section 948r (a).
24 *Ibid.*, Sections 950a and following.

B. Case law

Bosnia and Herzegovina

Suljo Karajic, Trial Chamber, The Court of Bosnia and Herzegovina, Case X-KR-07/336, 13 April 2010

On 13 April 2010, the Trial Chamber of the Criminal Division, Section I for War Crimes of the Court of Bosnia and Herzegovina found the accused Mr. Suljo Karajić guilty of the criminal offence of War Crimes against Civilians, as defined in Articles 173(1)(c) and (e) of the Criminal Code (namely, the ordering or perpetrating of killings, torture, and other bodily harm; and taking of hostages, unlawful detention, among other offences, respectively) and the criminal offence of War Crimes against Prisoners of War, under Articles 175(1)(a) and (b), namely killing and causing serious bodily harm.

The Chamber found Karajić responsible as direct perpetrator and accomplice to the crimes, determining that he committed and ordered to be committed, incited, and assisted subordinate military police officers to arbitrarily apprehend civilians from the village of Todorova Slapnica, Municipality of Velika Kladusa, allegedly supporting the autonomy of West Bosnia, later subjecting those apprehended to inhumane treatment and mental torture, and in some cases followed by summary execution at the village elementary school. A similar finding of responsibility was imposed for the murder and inhuman treatment of prisoners of war, from August 1994 to February 1995, when he was in command of a platoon of the military police within the 5th Corps of the Army of the Republic of Bosnia and Herzegovina.

He was sentenced to a single term of eighteen years' imprisonment for all counts.

Ante Kovać, Appellate Division Panel of the Court of Bosnia and Herzegovina, Case X-KRŽ-08/489, 4 March 2010

On 4 March 2010, the Appellate Division Panel of the Court of Bosnia and Herzegovina granted the appeal presented by the defence of Mr. Ante Kovac and ordered a new trial be carried out before the Appellate Panel of Section I for War Crimes. The defence had argued the appeal on the grounds of grave violations of the criminal procedure, the erroneous and incomplete account of facts, and violations of the Criminal Code.

Mr. Kovac, a commander for the Military Police Squad with the Vitez HVO Brigade, was found guilty in the first instance and sentenced to thirteen years' imprisonment for having ordered and approved the illegal capture and detention in inhumane conditions of more than 250 Bosnian civilians in Vitez in 1993. They were then transferred to the frontlines and obliged to dig trenches, and some of them executed. He was charged with War Crimes against Civilians, as per Articles 173(1)(e) and (f) of the Criminal Code, covering sexual offences, taking of

hostages, and unlawful detention, among others; and forced labour, pillage, and others, respectively.

Ljubo Tomić and Krsto Josić, State Court of Bosnia and Herzegovina, Case X-KR-07/346, 12 March 2010

On 12 March 2010, the Court of Bosnia and Herzegovina, Section I for War Crimes, acquitted the two accused, Mr. Ljubo Tomić and Mr. Krsto Josić, former members of the Republika Srpska Army, who were indicted for the shooting and killing of three Bosniak civilians on 26 June 1992 in Marhoši, Municipality of Zvornik. The Prosecutor had charged them with War Crimes against Civilians under Article 173(1)(c) of the Criminal Code (dealing with murder of protected persons), under the form of complicity in committing a criminal offence (Article 29 of the Criminal Code), and referring as well to Article 180(1) of the same Code, according to which a person who planned, instigated, ordered, perpetrated, or otherwise aided and abetted in the planning, preparation, or execution of certain criminal offences could be personally responsible for the criminal offence. Tomić and Josić had denied participation in the killings.

The Trial Panel found the Prosecutor had failed to prove the charges against the accused beyond reasonable doubt, as the case had been based entirely on the testimony of a single individual. As stated by the Court, the Panel had to evaluate the testimony in a critical and circumspect manner, since there was only one direct witness, and to look for its corroboration in other presented evidence, but did not find it in this specific case. In order to establish the criminal responsibility for such a severe criminal offence on the basis of a single direct witness, the Court argued that single witness testimony should be so clear and indisputable that other witness testimonies could shed no doubt on it but rather corroborated it. This was found not to be the case.

Ćerim Novalić, Court of Bosnia and Herzegovina, Case X-KR-09/847, 24 May 2010

Mr. Ćerim Novalić, a former member of the Army of Bosnia and Herzegovina, was found guilty in the first instance by the Court of Bosnia and Herzegovina, Section I for War Crimes, on 24 May 2010, of the charge of War Crimes Against Civilians committed in the Konjic area, in violation of Article 173(1)(e) of the Penal Code, which penalizes 'coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape) or forcible prostitution'.[25]

According to the Court, in September 1992, during the armed conflict between the Army of the Republic of Bosnia and Herzegovina and the Army of the Republika Srpska, the accused entered a house in the village of Dzepa, Konjic

25 Article 173(1)(e) of *Penal Code of Bosnia and Herzegovina*, 1 March 2003.

Municipality, together with one unidentified soldier, and raped a woman. He was sentenced to seven years' imprisonment.

Colombia

Geiber José and Mario José Fuentes Montaño, Criminal Chamber, Supreme Court of Justice, 27 January 2010

The Supreme Court of Justice passed final judgment on 27 January 2010 for the criminal case against Geiber José and Mario José Fuentes Montaño, siblings and members of the Autodefensas Unidas de Colombia (AUC), finding them guilty of 'homicide of protected person' (as per Article 135 of the Penal Code) and 'concerting to commit a crime' (Article 340 of the Penal Code), for participating in a raid against an indigenous village in the province of Valledupar, which resulted in at least four civilians being kidnapped and executed. The Court sentenced both to forty years' imprisonment and a fine of 10,000 'minimum legal wages'.

Acting as third and final review, the Court was required to rule on two issues: first, on whether the lower courts of Valledupar had erred in typifying the main offence as homicide, aggravated by the victims being 'internationally protected persons' as per Article 104(9) of the Penal Code, rather than 'homicide of protected person', a war crime found in Article 135 of the Code; secondly, whether certain witnesses' testimonies had been erroneously discarded by the lower courts and could, in effect, contribute to proving beyond reasonable doubt the participation in the killings of Mr. Geiber Fuentes, and thus reverse his previous acquittal on that count.

With regards to the first issue, the Court first clarified that the phrase 'internationally protected persons', as referred to by Article 104 of the Penal Code, was already defined in Law No. 169 of 1994, referring to heads of state, ministers of foreign affairs, or other persons granted immunities or other special protection under international law. 'Protected persons under IHL', however, referred to members of the civilian population, protected by IHL in times of armed conflict. The victims – indigenous civilians from the *Kankuamos* community – were found to fall under the latter category and not the former.

The Court also found it necessary, in rejecting the lower courts' arguments against the use of Article 135, to clarify certain points of law relative to IHL. The first of these was the fact that the legislation covering serious violations of IHL was applicable in times of 'armed conflict' generally, and was not restricted to acts committed during or as a result of direct 'combat', as argued by the lower courts. Secondly, the fact that the state had previously recognized the existence of a non-international armed conflict, in itself a political act, and had incorporated this recognition into Colombian law, also recognizing the AUC as one of the conflict's warring parties, meant that the issue was, thus, no longer open to interpretation or question. Thirdly, the Court rejected the notion that IHL was inapplicable to armed groups lacking an ideology, an argument used by the lower courts in an

apparent attempt to avoid providing the AUC with belligerent status. In this the Supreme Court stressed the fact that IHL provided no legitimacy or status nor granted favourable treatment to non-state actors; on the contrary, in the case of Colombian domestic law, it allowed for harsher sentences (as established under Article 135 of the Penal Code).

As for the second issue, related to the use of certain witnesses' testimonies, again the Supreme Court found the lower courts in error, admitting the evidence as a contributing element toward a finding of guilt, beyond reasonable doubt, against Mr. Geiber Fuentes as co-author of 'homicide against protected persons'.

Croatia

Prosecutor v. *Nedeljko Jankovic, Zadar District Court, 15 March 2010*

On 15 March 2010, the Zadar District Court of Croatia delivered a guilty verdict against Mr. Nedeljko Jankovic, a former member of the Yugoslav People's Army (JNA), and sentenced him to six years' imprisonment for War Crimes against the Civilian Population, in the forms of pillage and destruction of civilian property, and brutal intimidation of and spreading terror among the Croatian population. The offences were committed in the villages of Zemunik Gornji and Jagodnja Donja, in October and November 1991. The accused was charged on the basis of Article 158(1) of the Croatian Criminal Code. References were also made, however, to Article 3(1)(c) common to the 1949 Geneva Conventions (which refers to armed conflicts not of an international character), Articles 146 and 147 of the Geneva Convention IV (dealing with grave breaches applicable in international armed conflicts), and Articles 4(2)(d) and (g) of Additional Protocol II (again applicable only in non-international armed conflicts).

As for a qualification of the conflict, the Court described it as between the JNA and Serb paramilitary troops on one side and armed forces of the Republic of Croatia on the other. It did not determine in explicit terms whether it considered the conflict as international or non-international.

In determining the final term of imprisonment, the Court took into consideration the fact that Mr. Jankovic had already been tried by a JNA Military Court in 1991, serving two years in prison, together with the time spent in detention awaiting trial. This reduced the final sentence to three years.

Norway

Prosecutor v. *AAAA Toyen Tannlegevakt AS, Supreme Court of Norway, Case No. 2010/253, 12 May 2010*

The Supreme Court of Norway passed down a judgment on 12 May 2010, setting aside a Court of Appeals decision regarding whether the logo of a dental clinic could be easily confused with the emblem of the Red Cross. Both the District Court

and the Borgarting Court of Appeals had ruled in favour of the defendant, finding no violation under Section 328, second subsection, letter C of the General Civil Penal Code. Such provision prohibits, under penalty of a fine or short-term imprisonment, the use for an unlawful purpose of any sign or designation that could be easily mistaken for those determined for use in connection with aid to the wounded and sick in times of war, as established by an international agreement binding on Norway.

After briefly reviewing the history behind Section 328 and the current obligations arising from the four 1949 Geneva Conventions, to which Norway is a party, the Supreme Court gave significant importance to the fact that, given that the Conventions were intended to apply particularly in situations of conflict, it was in such context that the expression 'can be easily confused with' had to be read. Similarly, in order for the logo not to be covered by Section 328, confusion would need to not take place 'easily'.

With this in mind, and considering the logo was to be found, *inter alia*, above the entrance door to the company's premises, the Court found the basic feature of the logo, the red cross, was indeed a prominent element and thus inappropriate. Interpreting the Court of Appeal's application of the law to be incorrect, the case was returned to the District Court for retrial.

Prosecutor v. *Mirsad Repak, Appelate Chamber, Oslo, 11 March 2010*

On 11 March 2010, the Appellate Chamber of the District Court in Oslo confirmed a lower court's finding of guilt against Mr. Mirsad Repak, a former member of the Croatian Armed Forces (HOS), charged with war crimes in the form of unlawful deprivation of liberty of civilians, committed in 1992, at the Dretelj detention camp, Bosnia and Herzegovina.

Mr. Repak, who had been living in Norway for more than ten years and holds Norwegian citizenship, was initially brought to trial in 2008, charged with war crimes and crimes against humanity, in the form of illegal imprisonment of civilians of Serbian identity, torture, and rape. He was then sentenced to five years in prison and ordered to pay monetary compensation of up to 51,000 Euros to at least eight victims. The case at the time was deemed significant due to the application of recently adopted war crimes legislation, which the court found to apply to past events despite the constitutional guarantee of non-retroactivity.

In confirming the original finding of guilt, the Appeals Court reduced Mr. Repak's sentence from five years' to four years and six months' imprisonment, but increased the amount of compensation and the number of individuals to whom he would need to pay it. Justifying its decision, the Court argued that, even after reviewing Norwegian as well as Bosnian and international jurisprudence, it found it difficult to draw definitive conclusions on sentencing criteria, and was bound to consider other mitigating circumstances under Norwegian law (primarily the fact that eighteen years had passed since the commission of the offences). As for the compensation, it took guidance from Norwegian jurisprudence involving serious crimes.

United States

Ghaleb Nassar Al-Bihani v. *Barack Obama, US Court of Appeals, District of Columbia Circuit, 5 January 2010*

The United States Court of Appeals dismissed, on 5 January 2010, the appeal filed by Mr. Ghaleb Nassar Al-Bihani, a Yemeni citizen detained in the US naval base at Guantánamo Bay, thus affirming the denial of his petition for a writ of habeas corpus. The Court concluded that Al-Bihani's detention is lawful under the authority of the Authorization for Use of Military Force (AUMF),[26] and the Military Commissions Acts of 2006 and 2009.

Mr. Al-Bihani challenged the legitimacy of his detention by advancing a number of arguments based on IHL. First, he argued that 'support', or even 'substantial support', of Al Qaeda or the Taliban as an independent basis for detention violated international law and thus should be read into the AUMF. He also interpreted IHL to mean that anyone not belonging to an official state military is a civilian, and civilians, he argued, would need to commit a direct hostile act before they could be lawfully detained. Not having committed such an act, his detention was unlawful. The Court, however, rejected all references to the laws of war, arguing that 'their lack of controlling legal force and firm definition render their use both inapposite and inadvisable when courts seek to determine the limits of the President's war powers',[27] and that thus there was no need to 'quibble over the intricate application of vague treaty provisions and amorphous customary principles'.[28]

This was further supported, in view of the Court, by the fact that the 1949 Geneva Conventions had not been implemented domestically by Congress, and, even if they had been, Congress would still retain the power to authorize the President to use force that may exceed the bounds contained in IHL.

As for Mr. Al-Bihani's actions, the Court concluded that he had purposefully and materially supported enemies engaged in hostilities against the US since he was engaged as a cook with the 55th Arab Brigade – a Taliban unit that included Al Qaeda members within its command structure – and took part in hostilities against the Northern Alliance. In the Court's view, 'purposeful and material support' clearly included traditional food operations essential to a fighting force and the carrying of arms.

Regarding the release of Al-Bihani, the Court stated that IHL requires release and repatriation of prisoners of war at the 'cessation of active hostilities' as opposed to 'conflict' or 'state of war', thus differentiating the physical violence of war from any formal beginning and end of a conflict. The decision as to when

26 The Authorization for Use of Military Force Against Terrorists (Public Law 107-40, p. 115, Stat. 224, enacted 18 September 2001).

27 *Ghaleb Nassar Al-Bihani* v. *Barack Obama*, US Court of Appeals, District of Columbia Circuit, 5 January 2010, p. 7.

28 *Ibid.*, p. 8.

active hostilities have ceased, however, remained a political decision and thus for the Executive to determine.

Al-Zahrani et al. v. *Rumsfeld et al., US District Court for the District of Columbia, 16 February 2010*

On 16 February 2010, the US District Court for the District of Columbia dismissed a civil suit against the United States, Mr. Donald Rumsfeld, and other US officials, brought by Mr. Talal Al-Zahrani and Mr. Ali Abdullah Ahmed Al-Salami, in their individual capacities and on behalf of their sons, Mr. Yasser Al-Zahrani and Mr. Salah Ali Abdullah Al-Salami, who committed suicide while detained at the US naval base in Guantánamo, Cuba, in 2006.

The plaintiffs claimed that the detainees were arbitrarily detained and subject to torture and cruel and inhuman treatment, in violation of the 1949 Geneva Conventions, and sought reparation under the Alien Tort Claims Act. The plaintiffs also alleged that the detention and treatment of Mr. Al-Zahrani and Mr. Al-Salami constituted cruel punishment and deprived them of their life and liberty interests in violation of their constitutional rights under the Eighth and Fifth Amendments to the US Constitution. The amended complaint alleged that the individual defendants were liable for these violations in that defendants 'participated in, set the conditions, directly and/or indirectly facilitated, ordered, acquiesced, confirmed, ratified, aided and abetted, and/or conspired together'[29] in the detention and treatment of Mr. Al-Zahrani and Mr. Al-Salami. Finally, the plaintiffs challenged the US under the Federal Tort Claims Act for negligence, medical negligence, medical malpractice, intentional infliction of emotional distress, battery, and wrongful death. Regarding the legality of the detention regime, the plaintiffs argued that their claim was not barred by Section 7 of the Military Commission Act of 2006, which bars all US courts from exercising jurisdiction in cases involving persons detained by the US and determined to be enemy combatants, because of flaws and lack of guarantees of due process of the Combatant Status Review Tribunal (CSRT), allegedly established by the US Supreme Court in *Boumediene* v. *Bush*, and which would result in the invalidity of their status as enemy combatants.

The Court, however, found that Section 7 of the Military Commissions Act 2006 was not invalidated by the Supreme Court in *Boumediene* v. *Bush*, and determined both that the CSRTs were validly constituted and that the status of Mr. Al-Zahrani and Mr. Al-Salami had therefore been properly determined. The Court then declined to hear further challenges to the Military Commission Act, including claims of unconstitutionality.

Regarding claims against the individual defendants under the Alien Tort Claim Act, the Court agreed with the US government's argument that the officials

29 As cited in *Al-Zahrani et al.* v. *Rumsfeld et al.*, US District Court DC, Alien Torts Act, 2010 WL 535136 (D.D.C.), 16 February 2010, p. 3.

were acting within the scope of their duties when they detained and interrogated Mr. Al-Zahrani and Mr. Al-Salami, and therefore dismissed the claims under this Act.

Finally, the Court also concluded that Cuba maintains sovereignty over Guantánamo, and therefore dismissed the claims under the Federal Tort Claims Act as they would be barred by the Act's exception concerning claims 'arising in a foreign country'.[30]

C. National IHL Committees

Lebanon

The Lebanese National International Humanitarian Law Committee was created on 21 June 2010 by the entry into force of Presidential Decree No. 4382. Chaired by the deputy prime minister, it is composed of representatives from the Ministries of Justice, Foreign Affairs and Immigrants, Interior and Municipalities, Finance, National Defence, Higher Education, and Culture. Membership is completed by representatives of the Lebanese Red Cross Society, the Parliamentary Commission for Human Rights, Bar Associations in Beirut and Tripoli, the Lebanese Order of Physicians in Beirut and Tripoli, and others. The Secretariat is attached to the General Secretariat of the Prime Minister's Office.

The Committee will follow up an implementation plan to incorporate IHL into national legislation by, in particular, drafting the necessary provisions and measures to adapt national legislation; drawing up an annual plan of action for the appropriate dissemination of the law; co-ordinating between all the stakeholders involved in dissemination and implementation of IHL; exchanging information and expertise to strengthen relations at national, regional, and international level; and monitoring and documenting IHL violations at the domestic level. It will report annually to the prime minister. Finally, the Committee will provide proposals and recommendations for the national plan.

Serbia

The Serbian International Humanitarian Law Committee was officially established on 29 April 2010 for a period of five years.[31] The Committee consists of representatives of different ministries, namely the Ministry of Foreign Affairs (acting as President), Interior, Justice, and Health, as well as the International Law Association and the Serbian Red Cross.

The Committee's purpose is to follow up developments in the field of IHL, propose measures for the implementation of IHL, give advisory opinions to the

30 *Federal Tort Claims Act (FTCA)*, 28 U.S.C., paras. 1346(b), 2680(k).
31 *Official Gazette of the Republic of Serbia*, No. 30, 7 May 2010.

relevant bodies of the state administration on the fulfilment of state obligations, consider and propose measures regarding dissemination of IHL, and finally consider issues related to international co-operation and implementation with other National IHL Committees, the International Committee of the Red Cross, and other national and international organizations.