



UNIVERSITY
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Norwegian Centre for Human Rights

Forum for International
Criminal and Humanitarian Law



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International Criminal Justice and the Military

An international seminar organised in the series of the
Forum for International Criminal and Humanitarian Law¹

by the ICC Legal Tools Programme of the Norwegian Centre for Human Rights, University of Oslo; the Norwegian Red Cross; the Danish Red Cross; the Office of the Judge Advocate General, Norwegian Armed Forces; the Norwegian National Defence Command and Staff College; the Erik Castrén Institute of International Law and Human Rights, University of Helsinki; the International Institute of Humanitarian Law; the Christian Michelsen Institute; and the International Peace Research Institute, Oslo (PRIO).²

Friday, 12 September 2008 11:00 – Saturday, 13 September 2008 15:15
Henri Dunant Hall, Norwegian Red Cross, Hausmanns gate 7, Oslo

This two-day seminar examines the interplay between international criminal justice and the military. How, if at all, does the former, a relatively new set of concerns for lawyers and soldiers alike, influence or shape the latter's *modus operandi*? In what way would the ancient profession of soldiering help enhance international criminal justice and the latter's pertinence to the former? The seminar endeavours to bring international criminal lawyers, military lawyers and specialists in related disciplines, as well as officers and enlisted personnel in the armed forces concerned with the normative standards of military operations, closer together into dialogue and collaboration. Through presentations and discussions, participants explore various issues surrounding international criminal justice as an instrument of normative restraint on belligerent conduct.

Over the centuries, the laws and customs of war, also known as the law of armed conflict and international humanitarian law today, have acquired increasing acceptance and recognition within the military. Their numerous and often highly detailed provisions govern different aspects of warfare, ranging from the conduct of hostilities to the protection of the environment. A growing number of these provisions have expanded their scope of application beyond the traditional realm of inter-state wars into civil wars.

Many armed forces, for their part, maintain functioning military justice systems. It is eminently in their own interest to enforce discipline, not only to fight effectively and efficiently but also to regulate themselves as viable social organisations. There are also considerations of reciprocity which encourage them to observe certain standards of behaviour *vis-à-vis* their adversaries and, for this purpose, to ensure that their individual soldiers observe these standards. In some states, the military is held, or holds itself, accountable to its political leadership. The global and on-line media have exposed military action to greater normative scrutiny before a morally engaged public. These days, responsible armed forces are less likely to dismiss the idea that belligerent conduct in armed conflict can and should be subject to binding rules, including rules of international law.

If the military is prepared to live up to such an idea generally, is it also prepared to embrace the idea that some of these rules should be enforced through international and/or domestic criminal jurisdictions? Has

¹ The ICHL Forum, previously known as the Forum for International Criminal Justice and Conflict (FICJC), started as an informal initiative under the Ethics, Norms and Identities Programme of PRIO by its Senior Researcher Morten Bergsmo in consultation with Dr. Jo Stigen and Torunn Salomonsen, Department of Public and International Law, University of Oslo. Now with Morten Bergsmo and Nobuo Hayashi, PRIO Researcher, as its Convenors, the Forum aims to identify and facilitate discourses on key issues in international criminal and humanitarian law. Matters of interest to the Forum also encompass humanitarian affairs, criminal justice, truth and reconciliation and other questions surrounding the two fields of law and related disciplines. Through its seminars, workshops and publications, the Forum brings together legal academics and practitioners, government officials, NGO representatives, philosophers, political scientists and others. Information about the Forum can be found at www.prio.no/ficjc/.

² The Forum would like to thank the Royal Norwegian Ministry of Foreign Affairs, the Norwegian Red Cross, the Danish Red Cross and the Norwegian Centre for Human Rights for their financial contributions to this seminar.

international criminal justice penetrated the minds of men and women in arms with whom, among others, it is concerned? Does international criminal justice have what it takes—*i.e.*, a balance between imposing just restraints on the freedom of action for the military, on the one hand, and being alive and sensitive to its legitimate interests, on the other hand—to be taken seriously by otherwise reasonable, law-abiding soldiers? In what way would they be held meaningfully accountable for war-time behaviour punishable under international law?

The seminar follows three themes, namely: (i) the role of international criminal justice in the military; (ii) the role of the military in international criminal justice; and (iii) the manner in which the interaction between the military and international criminal justice manifests itself, and what the particular manner of this manifestation means for today's soldierly profession.

- *International criminal justice in the military.* What is the relationship between criminal sanctions and the military mind? What distinguishes the job of killing from the crime of killing in war? How would ethical considerations and the values underlying fundamental human rights such as the right to life and dignity affect the combat behaviour of soldiers as autonomous moral agents? Do threatened and/or actual war crimes prosecutions really undermine military morale, as it is sometimes claimed? Does the difference between war crimes and service offences make any difference? Does international criminal justice really affect military behaviour? How is international criminal justice incorporated into military doctrine, training and planning, as well as into command and control? What impact, if any, has the work of the *ad hoc* tribunal in The Hague and national war crimes jurisdictions had on the armed forces of the former Yugoslavia?
- *The military in international criminal justice.* How are those who administer international criminal justice to understand the notion of the "reasonable soldier"? In what manner would various "constituencies" influence the way in which provisions of international criminal law are interpreted? How well have international criminal lawyers delimited the parameters of reasonable belligerent conduct, such as duress and other circumstances in which soldiers may find themselves where life-and-death decisions must be made quickly and based on imperfect and conflicting information? What role, if any, does or should military expertise play in international criminal litigation? Do international rulings account competently for the realities of military operations, *e.g.*, when separating criminal conduct from lawful conduct in hostilities?
- *War, crime and the soldierly profession.* Through what frameworks does international criminal justice hold soldiers accountable for their conduct? Should they be brought before military or civilian criminal proceedings, and how would the choice affect accused persons' fair trial rights relative to other interests? Can national jurisdictions be trusted to enforce international criminal law *vis-à-vis* members of their own armed forces, by branding them as war criminals if necessary? Does the evolution of international criminal justice from the post-World War II International Military Tribunals to the new International Criminal Court mark a triumph of the international criminal lawyer over the military lawyer? What are the implications of the interplay between international criminal justice and the military for soldiers in contemporary armed conflicts?

While primarily legal and legal policy-oriented, the seminar also incorporates the overarching contexts of military history and philosophy. Discussions will be led by prominent international experts with extensive experience in these fields.

Registration:

To register, please send an e-mail message to ficjc@prio.no (with "Seminar 080912" in the subject field) by 1 September 2008, indicating your wish to register as a seminar participant. Remember to include your name and, for the purpose of the list of participants, your functional title (for example, "student" or "Legal Adviser (MFA)") and e-mail address.

Accommodation:

The *Thon Hotel Spectrum* (spectrum@thonhotels.no) and *Thon Hotel Terminus* (terminus@thonhotels.no) – both quite functional hotels close to the seminar venue and Oslo Central Station – offer discounts for registered seminar participants; when making your reservation, please mention special Norwegian Red Cross rates. For more information about the hotels, please consult the website of the Thon hotels group at <http://www.thonhotels.com/>.

Programme:

FRIDAY, 12 SEPTEMBER 2008

- 11:00 **Introductory remarks of the seminar moderator**, by Gro Nystuen³ (Associate Professor, University of Oslo and the Norwegian Defence Command and Staff College).
- 11:05 **Welcome**, by Trygve G. Nordby⁴ (Secretary-General, Norwegian Red Cross).
- 11:10 **Opening remarks**, by Espen Barth Eide⁵ (State Secretary, Norwegian Ministry of Defence).

Module A

International Criminal Justice in the Military

Session I

Criminal sanctions and the military mind

- 11:15 **Introductory remarks of the session moderator**, by Martin L. Cook⁶ (Professor of Philosophy and Deputy Department Head, United States Air Force Academy).
- 11:20 **Soldiers as autonomous moral agents: an introduction to battlefield ethics**, by Bård Mæland⁷ (Professor of Systematic Theology, School of Mission and Theology).
- 11:45 **War crimes prosecutions and military morale**, by Richard Nugee⁸ (Brigadier General, Chief Joint Fires and Influence Operations (UK Army), HQ Allied Rapid Reaction Corps).

³ **Gro Nystuen** is dr. juris Associate Professor of International Humanitarian Law at the University of Oslo and the Norwegian Defence Command and Staff College. She worked in the Ministry for Foreign Affairs (MFA) from 1991 to 2005, except from 2000-2003 when she was on leave to write her doctoral thesis (on the Dayton Peace Agreement) at Oslo Law Faculty. In the MFA, she worked in the Department for International Law; her last position in the Ministry was Deputy Director General, head of the Section for Human Rights and Democracy. In addition to public international law in general, she has worked in particular with human rights, international humanitarian law and arms issues, including the Mine Ban Convention. She was stationed at the Norwegian Permanent Mission to the UN in Geneva (1994-95), and seconded to work as legal adviser at the Yugoslavia Conference for the UN Co-chair, Thorvald Stoltenberg (1995), and for the High Representative in Bosnia, Carl Bildt (1995-1997). She was appointed to chair the Council on Ethics for the Norwegian Government Pension Fund in 2004, and has from 2005 held this office in addition to her teaching position at the University of Oslo and the Command and Staff College.

⁴ **Trygve G. Nordby**, Secretary General of the Norwegian Red Cross, has substantial experience from senior management positions within both the volunteer and public sectors. In the period from 1990 to 1997, he was Secretary General of the Norwegian Refugee Council and Adviser on Return and Integration to the OSCE Mission to Croatia 1998-99. From 1999 to 2001, he worked as an independent consultant in the fields of international humanitarian affairs, management and communication. Before joining the Red Cross/Red Crescent Movement in March 2006, Mr. Nordby was the Director General of the Norwegian Directorate of Immigration.

⁵ **Espen Barth Eide** is State Secretary of the Norwegian Ministry of Defence.

⁶ **Martin L. Cook**, Ph.D., is Professor of Philosophy and Deputy Department Head at the United States Air Force Academy. Prior to that, he was Professor of Ethics in the Department of Command, Leadership and Management (DCLM) of the United States Army War College (USAWC) in Carlisle, PA in 1998, and was awarded the Elihu Root Chair in Military Studies in 2001. Dr. Cook received his B.A. *magna cum laude* from the University of Illinois, and the M.A. and Ph.D. from the University of Chicago. Prior to joining the Army War College faculty, he was a tenured professor at Santa Clara University, CA, where he had taught since 1982. He has also taught at the Graduate Institute of St. John's College in Santa Fe, New Mexico; The College of William and Mary; Gustavus Adolphus College in St. Peter, Minnesota; and St. Xavier College, Illinois. Dr. Cook has lectured widely in the United States to military and civilian audiences. He has delivered invited lectures to the military educational institutions of the United Kingdom, Ecuador, Norway, Singapore, and Australia. Dr. Cook serves on the editorial boards of *Parameters*, the scholarly journal of the Army War College, and of *The Journal of Military Ethics*. His most recent book, *The Moral Warrior: Ethics and Service in the US Military* was published by the State University Press of New York in June, 2004.

⁷ **Bård Mæland** is Professor of Systematic Theology, School of Mission and Theology. He has worked on the relationship between Christianity and Islam as well as professional ethics, and has published monographs and articles in both areas. He is also editor of *Journal of Military Ethics*, and he comes from a position as chaplain and researcher in the Norwegian army.

⁸ **Brigadier General Richard Nugee** is Chief Joint Fires and Influence Operations (UK Army), HQ Allied Rapid Reaction Corps. Born in 1963, he was awarded an Army Scholarship in 1979 and then a Cadetship to read Anthropology Hons at Durham University before being commissioned into the Royal Artillery in 1985. His first posting was to 32 Heavy Regiment RA in Dortmund as a Troop Commander, Command Post Officer and Gun Position Officer and included two tours of Northern Ireland. He was then posted to 3 RHA in Paderborn as a Battery Captain, then Adjutant and included a further two tours of Northern Ireland, the last under Lt Col (now Lt Gen) D J Richards. Attendance at Div 2 of the Army Staff College (where he gained an MA) was in 1995, followed by a posting to Directorate Manning (Army) where he was awarded an MBE before returning to 3 RHA, now in Hohn, to command an AS90 Battery,

- 12:10 **War crimes v. service offences: does the difference make any difference?**, by Daryl Mundis⁹ (Senior Trial Prosecuting Attorney, Office of the Prosecutor (OTP), International Criminal Tribunal for the Former Yugoslavia (ICTY)).
- 12:35 *Discussion*
- 13:00 *Lunch break*

Session II

Does international criminal justice really affect military behaviour?

- 13:45 **Introductory remarks of the session moderator**, by Arne Willy Dahl¹⁰ (Judge Advocate General of Norway).
- 13:50 **Incorporating international criminal justice into doctrine, training and planning**, by Philip McEvoy¹¹ (Brigadier General, British Army Operational Law Branch).
- 14:15 **Incorporating international criminal justice into command and control**, by Ulf-Peter Häußler¹² (Legal Advisor, Joint Command Special Operations, Germany).
- 14:40 **The ICTY, national war crimes jurisdictions and the armed forces in the former Yugoslavia**, by Vladimir Bilandžić¹³ (Senior Advisor to the Head of Mission, Organisation for Security and Co-operation in Europe (OSCE) Belgrade).

which included deployments to Bosnia and Kosovo on operations and Poland and Canada on exercise. Promoted to Lt Col in 2001, he joined the Joint Services Command and Staff College as an SO1 Instructor, which included time as a Col as Director Central Writing Team. He took command of 40 Regiment RA in 2003 and deployed the Regiment to Iraq on TELIC 2. Shortly after returning he deployed the Regiment to Cyprus as part of UNFICYP. He was promoted Col in 2005 and was posted as Chief of Staff for Project HYPERION, the integration of HQs LAND and AG, and the formation of HQ Land Forces. He attended HCSC and was promoted Brigadier in 2006 as Chief Targeting and Information Operations for the ARRC, and deployed with them to Afghanistan from October 2006. He is married to Frances and they have two sons aged 10 and 12 at boarding school in England. His hobbies include being with his family, skiing (nowadays preferably downhill) and offshore sailing; he is currently the vice-commandore of the British Kiel Yacht Club.

⁹ **Daryl Mundis**, Senior Trial Prosecuting Attorney, Office of the Prosecutor (OTP), International Criminal Tribunal for the former Yugoslavia (ICTY), is currently prosecuting the *Šešelj* case. During a decade at the ICTY, he has led or been on the trial teams in seven cases, including *Delić, Prlić et al., Hadžihasanović and Kubura, Galić, Keraterm and Foča*. Additionally, he served in the ICTY OTP Legal Advisory Section and was an Associate Legal Officer in the Cabinet of ICTY President Gabrielle Kirk McDonald, working on issues involving the Security Council and non-compliance issues. Prior to joining the ICTY, he served on active duty for more than five years in the U.S. Navy JAG Corps, as trial counsel, defence counsel and legal adviser. He has written and published on international humanitarian law in general and the law of the ICTY in particular.

¹⁰ **Arne Willy Dahl** is Judge Advocate General for the Norwegian Armed Forces, and in that capacity responsible for penal prosecution in military cases and for legal advice in summary punishment cases. He was born in 1949 and finished law school at the University of Oslo in 1974. He has received reserve officer training in the infantry and the medical corps. Since 1982, he has taken positions as a lecturer at the Army Academy, Judge Advocate for eastern Norway, District Attorney (public prosecutor) in Oslo, Head of the Legal Services of the Norwegian Armed Forces, and Prosecutor at the Office of the Director for Public Prosecutions with special responsibility for war crimes. He has written *Håndbok i militær folkerett* ("Handbook of Military International Law") and is for the time being president of the International Society for Military Law and the Law of War.

¹¹ **Brigadier General Philip McEvoy**, OBE, heads the British Army Operational Law Branch at the Land Warfare Centre, Warminster.

¹² **Ulf Häußler** is a member of the Legal Service of the German Armed Forces since 2002. He holds his present position since January 2007; he has previously been posted as a Legal Advisor and Military Prosecutor at the German Army Forces Command (2004-2007) and the Lecturer in Law and Legal Advisor to the Commander of the Military College of the German Artillery (2002-2004). He has been deployed to KFOR (2006) and SFOR (2004) and served on secondment in the Legal Office, NATO International Staff (2006). Prior to joining the Legal Service of the German Armed Forces, he was a Research Fellow and Lecturer (1997-2002) at the Universities of Konstanz (1998-2002), Würzburg (1998), and Regensburg (1997), and served as a Research Fellow for Justice LWH Ackermann at Constitutional Court of South Africa (1997). His publications include *Ensuring and Enforcing Human Security - The Practice of International Peace Missions* (Wolf Legal Publishers, Nijmegen 2007); "Regional Human Rights vs. International Peace Missions: Lessons Learned from Kosovo," in: *Journal of International Law of Peace and Armed Conflict* 2007, 238-244; "KFOR: Current Legal Issues," in: *Journal of International Law of Peace and Armed Conflict* 2007, 24-32; "Command Responsibility in Combined Environments: Putting Combined Operations Legal Lessons Learned into Perspective," in: 44 *The Military Law and the Law of War Review* 143-167 (2005).

¹³ **Vladimir Bilandžić**, Ph.D., is Special Advisor for Confidence and Security Building Measures in the Organisation for Security and Co-operation in Europe (OSCE) Mission to Serbia in Belgrade (2001-present). From 1996 until 2001, he lectured on Balkan security and Southeast-European politics at the Interdisciplinary MA Program on Southeast European Studies at the Central European University, Budapest (1996-2001). Between 1986 and 1991, he participated in CSCE conferences and meetings in Geneva, Belgrade, Madrid, Stockholm and Paris and served as a member of the delegation of the former Yugoslavia at CSCE conferences in Vienna.

15:05 *Discussion*

15:30 *Coffee break*

Module B
The Military in International Criminal Justice

Session III

International criminal lawyers and the "reasonable soldier"

15:45 ***Introductory remarks of the session moderator***, by Kai Ambos¹⁴ (Chair of Criminal Law, Criminal Procedure, Comparative Law and International Criminal Law, Georg-August-Universität Göttingen).

15:50 ***The notion of "constituencies" in the interpretation of international criminal law: legally protected interests and different approaches***, by Morten Bergsmo¹⁵ (Senior Researcher, International Peace Research Institute, Oslo (PRIO)).

16:15 ***Criminal liability or heroic self-sacrifice? Erdemović and its aftermath***, by Robert Cryer¹⁶ (Professor of International and Criminal Law, University of Birmingham Law School).

16:40 ***Reviewing combat decisions: prospects and limitations***, by Aharon Barak¹⁷ (Professor of Law, Interdisciplinary Center (IDC) Herzliya).

17:05 *Discussion*

17:30 *Reception*

Until 1989, he was a researcher at the Institute of International Politics and Economics in Belgrade, focusing on arms control and issues of European security and co-operation. He also stayed at the East West Institute in New York as a visiting fellow and participated in a number of international conferences and seminars. A graduate of the Law Faculty in Belgrade, he has an MA in Political Science from McMaster University, Hamilton, Canada, and a Ph.D. in International Relations from the Belgrade Law Faculty. He has published on matters related to international security, arms control and Southeast European politics.

¹⁴ **Kai Ambos** has been Chair of Criminal Law, Criminal Procedure, Comparative Law and International Criminal Law at the Georg-August-Universität Göttingen (May 2003-present) and also Judge at the State Court (Landgericht) Göttingen. He is also freelance consultant on the issues of international criminal law and judicial reform in Latin America to the Deutsche Gesellschaft für technische Zusammenarbeit (GTZ-German agency for technical cooperation), the Konrad Adenauer Foundation and other organisations. From 1991 to 2003, he was senior research fellow at the Max-Planck-Institute for Foreign and International Criminal Law (Freiburg im Breisgau, Germany). On behalf of Germany, he has participated in the negotiations on the creation of the International Criminal Court and later became a member of the expert working group of the German Federal Ministry of Justice on implementing the Rome Statute. He has written widely on international criminal law and procedure in German, English, Spanish and Portuguese. He is a member of editorial boards of several international criminal journals in Europe and Latin America. His educational background includes: study of law and political science at the Universities of Freiburg (Germany), Oxford (United Kingdom) and Munich (Germany); 1st and 2nd state exams; and "Habilitation" (post-doctoral qualification for a professorship) in criminal law, criminal procedure, criminology, comparative law and public international law at the Ludwig Maximilian University Munich (Germany).

¹⁵ **Morten Bergsmo** is Senior Researcher, International Peace Research Institute, Oslo (PRIO) (2006-present). Formerly, he was Senior Legal Adviser and Chief of the Legal Advisory Section, Office of the Prosecutor, International Criminal Court (ICC) (2002-05); Legal Adviser, ICTY (1994-2002); Legal Adviser, UN Commission of Experts for the Former Yugoslavia established pursuant to UNSC Resolution 780 (1992) (1993-94). He represented the ICTY to the UN negotiation process to establish the ICC (1996-2002). He has advised on core international crimes investigation and prosecution processes in several countries, including Bosnia and Herzegovina, Cambodia, Canada, Denmark, Indonesia, Macedonia, the Netherlands and Serbia, and has had several international consultancies in international criminal justice. He has published extensively in international criminal law.

¹⁶ **Robert Cryer** obtained his undergraduate law degree in Cardiff Law School, then moved to the School of Law in Nottingham where he obtained his LLM and PhD degrees in 1996 and 2000 respectively. He was a lecturer in the University of Manchester from 1999-2001 before returning to the School of Law, University of Nottingham in September 2001. He moved to Birmingham in April 2007. His major teaching and research interests are in international law and criminal law. In addition to a number of articles and book chapters he is the author of *Prosecuting International Crimes: Selectivity and the International Criminal Law Regime* (Cambridge: CUP, 2005) and co-author (with Håkan Friman, Darryl Robinson and Elizabeth Wilmshurst) of *An Introduction to International Criminal Law and Procedure* (Cambridge: CUP, 2007). His current research includes writing a book on The Tokyo International Military Tribunal for Oxford University Press. He is book review editor of the *Journal of Conflict and Security Law*.

¹⁷ **Aharon Barak** was born in Kaunas, Lithuania and immigrated to Israel in 1947. He studied law at the Hebrew University of Jerusalem where, after completing a term of service in the Israeli Defense Forces, he received his Doctorate in Law in 1963. Thereafter, President Barak continued his relationship with the Hebrew University, serving as a Lecturer, Professor, and Dean of the Law School. In 1978, he was appointed Justice of the Supreme Court of Israel, where he served in the capacity as President from August 1995 until his retirement in September 2006. All these years he remained active in academia through his ongoing teaching relationship with the Hebrew University and Yale University in the United States. Since 2007 academic year, Professor Barak has been on the faculty at the Interdisciplinary Center (IDC), Herzliya. President Barak lives in Herzliya with his wife Elisheva, herself former Vice-President of the National Labour Court of Israel. They are the parents of four children, all trained in law.

SATURDAY, 13 SEPTEMBER 2008

Session IV

"Economics 001" for anti-trust lawyers. "Military Science 001" for international criminal lawyers?

- 09:00 ***Introductory remarks of the session moderator***, by John D. Hutson¹⁸ (President and Dean, Franklin Pierce Law Center).
- 09:05 ***The role of military expertise in laying and defending criminal charges***, by Reynaud Theunens¹⁹ (Intelligence Analyst (Military), OTP, ICTY).
- 09:30 ***Pursuing and defending military leaders: co-perpetrators and/or derelict commanders?***, by Andrew Cayley²⁰ (Barrister).
- 09:55 ***Separating criminal conduct from lawful conduct in armed hostilities***, by Lord Iain Bonomy²¹ (Judge, ICTY).
- 10:20 *Discussion*
- 10:45 *Coffee break*

Module C

War, Crime and the Soldierly Profession

Session V

Frameworks of international criminal justice

¹⁸ **John D. Hutson** is President and Dean of the Franklin Pierce Law Center. Dean Hutson was born in North Muskegon, Michigan. He was commissioned in the U.S. Navy upon graduation from Michigan State University in 1969. He graduated from the University of Minnesota Law School in 1972. Upon admission to the State Bar of Michigan, he attended the Naval Justice School in Newport, R.I. In 1973, he was assigned to the Law Center in Corpus Christi, TX, where he served as Chief Defense Counsel and Chief Trial Counsel. In 1975, he was transferred to Naval Air Station, Point Mugu, CA. He served as the Station legal officer for two years before returning to Newport to serve as an instructor at the Naval Justice School, where he taught Civil Law, Procedure, and Evidence. In 1980, Dean Hutson attended Georgetown University Law Center where he earned a Master of Laws degree in labor law. He was then assigned as a legislative counsel in the first of three tours in the Office of Legislative Affairs for the Navy. In 1984, he was assigned to the Portsmouth Naval Shipyard in Kittery, ME, where he served both as Staff Judge Advocate and Administrative Officer. Dean Hutson assumed duty as Executive Officer of the Naval Legal Service Office, Newport, RI, in 1987. In 1989, he returned to Washington, DC, to serve as Staff Judge Advocate and Executive Assistant to the Commander, Naval Investigative Command. In August, 1989, Dean Hutson moved to the Office of Legislative Affairs as Director of Legislation. Between October, 1992, and November, 1993, he was assigned as the Executive Assistant to the Judge Advocate General of the Navy. In November, 1993, he resumed duty in the Office of Legislative Affairs. In August, 1994, he assumed duty as Commanding Officer, Naval Legal Service Office, Europe and Southwest Asia, located in Naples, Italy. In July, 1996, Dean Hutson returned to the Naval Justice School as Commanding Officer. He was promoted to the rank of Rear Admiral, and assumed duties as the Judge Advocate General of the Navy in May, 1997. He also served as the DOD/JCS Representative for Ocean Policy. Dean Hutson was awarded the Distinguished Service Medal, the Legion of Merit (with three gold stars), Meritorious Service Medal (with two gold stars), Navy Commendation Medal, and Navy Achievement Medal. Dean Hutson is married to the former Paula Smith of Fairview Park, OH. They have two daughters, Christy and Melissa.

¹⁹ **Reynaud Theunens** is Intelligence Analyst (Military) at the ICTY OTP. After graduating from the Royal Military Academy, Brussels, he joined the Belgian Armed Forces in Germany. He subsequently served as a military intelligence analyst at the Belgian Ministry of Defence and attended specialised training in the UK, US and Sweden. Between 1994 and 1999, he worked as a military information/intelligence officer in the UNPROFOR/UNPF, UNTAES and SFOR headquarters. He joined the ICTY in 2001 where he has been conducting in depth research and analysis in support of investigations and prosecutions of violations of international humanitarian law during the conflict in the former Yugoslavia, with particular emphasis on *de jure* and *de facto* command and control structures. He testified in four trials as a military expert witness for the Prosecution on these matters and has given lectures on the role of (military) intelligence in the investigation and prosecution of violations of the law of armed conflict.

²⁰ **Andrew Cayley** is a barrister in the chambers of Anthony Berry QC and defence counsel for Charles Taylor. Previously, he served as a commissioned officer and legal officer in the British Army; a Senior Trial Prosecuting Attorney in the ICTY OTP; and a Senior Prosecuting Counsel in the ICC OTP.

²¹ **Lord Iain Bonomy** is a Judge at the ICTY. In keeping with the general custom in the United Kingdom, Lord Bonomy practised law as a Litigator in the civil field and as a Prosecutor and Defence counsel in the domestic criminal field for 26 years before his appointment to the Bench of the Supreme Courts in Scotland in 1997. There he presided in a wide range of trials until his appointment in 2004 to the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia conducting the trial of Slobodan Milošević following the illness and resignation of his U.K. predecessor in the Trial Chamber, Sir Richard May. To date Lord Bonomy has continued to sit in trials at the ICTY, and currently is the Presiding Judge in the trial of six former leading government ministers and senior army and police officers alleged to have participated with Milošević in a joint criminal enterprise to ethnically cleanse Kosovo of Kosovo Albanians in 1999.

- 11:00 **Introductory remarks of the session moderator**, by Siri Frigaard²² (Chief Public Prosecutor, Norwegian National Authority for Prosecution of Organised and Other Serious Crimes) [*invited; to be confirmed*].
- 11:05 **Fair trial standards in military and civilian criminal proceedings**, by Tim McCormack²³ (Foundation Red Cross Australia Professor of International Humanitarian Law, University of Melbourne).
- 11:30 **Branding one's own soldiers as war criminals: can national jurisdictions be trusted to enforce international criminal law vis-à-vis members of their armed forces?**, by Nobuo Hayashi²⁴ (Researcher, PRIO/Visiting Professor, International University of Japan).
- 11:55 **From the post-World War II International Military Tribunals to the International Criminal Court: triumph of the international criminal lawyer over the military lawyer?**, by David Turns²⁵ (Senior Lecturer, Laws of Armed Conflict, UK Defence Academy).
- 12:20 *Discussion*
- 12:45 *Lunch break*

Session VI
Synthesis

- 13:30 **Introductory remarks of the session moderator**, by Roar Sundseth²⁶ (Royal Norwegian Army Deputy Commander and Chief of Staff, National Defence Headquarters).

²² **Siri Frigaard** has been the chief public prosecutor and director of the Norwegian National Authority for Prosecution of Organized and Other Serious Crime since August 2005, when this office was established. The office is also responsible for the investigation and prosecution of special international crimes, such as war crimes, genocide and crimes against humanity. Prior to this appointment, she was the deputy director of the National Criminal Investigation Service (NCIS) in Norway, from May 2003. She has been a public prosecutor in Norway since 1985, and chief prosecutor and deputy director for the regional prosecution office in Oslo since 1993. She has also served as acting director of this office. Previously, she worked as an assistant chief of police and prosecutor with the Oslo Police Department for about six years, primarily in charge of the investigation of organized drug trafficking. From January 2002 until May 2003, she was deputy general prosecutor for serious crimes in East Timor in charge of the investigation and prosecution of the crimes committed in 1999. She also served as a prosecutor and special legal adviser to the general prosecutor of Albania from June 1999 to October 2001. She has represented Norway on different committees at the European Council in Strasbourg and in the Baltic Sea Co-operation concerning international legal aid.

²³ **Tim McCormack** is the Foundation Australian Red Cross Professor of International Humanitarian Law, University of Melbourne Law School. He is also the Foundation Director of the Asia-Pacific Centre for Military Law—a collaborative training and research venture between the Law School and the Australian Defence Force Legal Service. He has special research interests in the fields of international humanitarian law, international criminal law, arms control and disarmament and international law and the use of force. He acted as *amicus curiae* on international law matters to ICTY Trial Chamber III for the trial of Slobodan Milošević from 2002 until the death of Milošević in 2006. He also provided law of war advice to the defence team for David Hicks from 2003-2007. In that capacity he travelled to Guantanamo Bay, Cuba to attend the US Military Commission proceedings against David Hicks in March 2007.

²⁴ **Nobuo Hayashi** is Researcher at PRIO; Visiting Professor at the Graduate School of International Relations, International University of Japan. Previously, he was a Legal Advisor at the Norwegian Centre for Human Rights, University of Oslo Law Faculty. He also served in the ICTY-OTP, first as an Associate Legal Officer in the Legal Advisory Section (2000-2003) and then as a Legal Officer in the Prosecutions Division (2004-2006). He has published and edited works in international humanitarian law, international criminal law and legal philosophy; lectured at defence academies, Red Cross conferences and university faculties of law, political science and peace and security studies; and trained officers as well as enlisted personnel, military lawyers, judges, prosecutors, defence lawyers, diplomats and other government officials. He holds a BS in Foreign Service in international relations, law and organisation from Georgetown University; a *Diplôme d'études supérieures* in international law from the *Institut universitaire de hautes études internationales* (HEI) in Geneva; and an LL.M. from the University of Cambridge.

²⁵ **David Turns** is Senior Lecturer, Laws of Armed Conflict, UK Defence Academy. Previously, he was a full-time Lecturer in Law at the University of Liverpool (1994-2007); and a part-time Lecturer at the London School of Economics & Political Science (1990-1994), where he completed both his LL.B. (1987-1990) and LL.M. in International Law (1991-1992) degrees. He was called to the Bar of England and Wales by the Inner Temple in 1992 and also taught at Holborn College and Regent School of Law in London (1993-1994).

²⁶ **Major General Roar Sundseth** is Royal Norwegian Army Deputy Commander and Chief of Staff, National Defence Headquarters. He was promoted to his present rank and appointed Deputy Commander and Chief of Staff, National Joint Headquarters, in September 2006. He entered the service in the Signal Corps of the Norwegian Army in 1972 after finishing Officer Candidate School. He then served at unit level in the Signal Corps, completed the Military Academy and served as an instructor at the Army School of Signals. He attended the Army Staff College during the period 1988-1992 and graduated from US Marine Corps Command and Staff College in 1994. Within the same period, he served as an instructor at the Army School of Signals, Staff Officer at Headquarters Defence Command North Norway, Commander Land Forces North Norway and Head of Public Information, Defence Command North Norway. In 1994, he was appointed Chief of Operations, Defence Command North Norway where he served until 1997 when he took over as Branch Chief, Plans & Policy Division, Army Staff. From 1998 until 2001, he served as Chief of Staff 6th Division while attending the following schools/courses: US Naval Postgraduate School, Defence Resources Management Course, National Defence

13:35 **War, crime and the soldierly profession in contemporary armed conflicts**, a panel discussion:

Roar Sundseth, *moderator*

Martin L. Cook
Arne Willy Dahl
Kai Ambos
John D. Hutson
Siri Frigaard

14:20 *Discussion*

15:00 **Closing remarks**, by Rolf Einar Fife²⁷ (Director General, Legal Affairs Department, Norwegian Ministry of Foreign Affairs).

College Crisis Management and National Defence College, Commanders Course. He also has a Master's degree in Strategic Studies (MSS) from the US Army War College, Class of 2002. In 2004, he attended the NATO Defence College, General & Flag Officers Course. Prior to his current appointment, he served as Chief of the Norwegian Liaison Team at US Central Command 2002-2003, Chief of Operations in Joint Staff, Headquarters Defence Command Norway, and Director of Operations Planning in The Ministry of Defence (2003-2006). He was in 1954 in Melhus, Trøndelag, and is married to Ellinor with one son.

²⁷ **Rolf Einar Fife** is Director General, Legal Affairs Department, Norwegian Ministry of Foreign Affairs.