

BRIEF NOTES

Final Marine Defendant in Haditha Deaths Pleads Guilty to Lesser Charge, Receives Light Sentence

In the final court-martial proceeding growing out of the deaths of twenty-four Iraqi civilians in Haditha, Iraq, in November 2005, Staff Sergeant Frank Wuterich, leader of the squad involved in the killings, agreed to plead guilty to a single charge of dereliction of duty. Pursuant to his plea agreement, Wuterich was reduced in rank to private and discharged from the Marine Corps. Wuterich faced with multiple charges, including nine counts of involuntary manslaughter.¹

Wuterich was one of eight marines charged with serious offenses under the Uniform Code of Military Justice in connection with the civilian deaths in Haditha.² Charges against a lieutenant colonel,³ a captain, and four enlisted marines were dropped, and a marine lieutenant was acquitted at trial.⁴

Wuterich's plea bargain and light sentence were condemned by relatives of the victims and by senior officials in Iraq.⁵ For many Iraqis, the civilian deaths in Haditha became a symbol of excessive use of force by U.S. military personnel and security contractors. This series of events contributed to Iraq's refusal to allow immunity from local jurisdiction for U.S. military personnel, leading to U.S. forces' withdrawal at the end of 2011.⁶

Secretary of State Clinton Reaffirms U.S. Support for Law of the Sea Convention

In a statement to the Pew Business Roundtable in mid-December 2011, Secretary of State Hillary Rodham Clinton reaffirmed U.S. support for the Law of the Sea Convention. Her statement follows:

I am delighted to have this opportunity to speak to this roundtable and once again voice my support for joining the Law of the Sea Convention. Signing onto the Convention is critical to protecting American security and enhancing our economic strength.

Joining the Convention would put America's resource rights on firm legal footing, protecting American business interests and helping those businesses stay competitive internationally. The Convention provides legal certainty and predictability that businesses can rely on, empowering them to pursue ventures that they would not be able to undertake otherwise.

¹ *Prosecutor Says Marine Lost Control in Haditha Massacre*, WASH. POST, Jan. 10, 2012, at A9.

² John R. Crook, *Contemporary Practice of the United States*, 100 AJIL 690, 713 (2006); 100 AJIL 918, 950 (2006); 101 AJIL 185, 215 (2007); 101 AJIL 478, 494 (2007); 101 AJIL 636, 663 (2007); 101 AJIL 866, 893 (2007).

³ John R. Crook, *Contemporary Practice of the United States*, 103 AJIL 325, 358 (2009).

⁴ *Id.*

⁵ Michael S. Schmidt, *Anger in Iraq After Plea Bargain over 2005 Massacre*, N.Y. TIMES, Jan. 25, 2012, at A9; Aseel Kami, *Iraq Says to Take Legal Action for Haditha Victims*, REUTERS, Jan. 26, 2012, at <http://www.reuters.com/article/2012/01/26/us-iraq-massacre-idUSTRE80P1JA20120126>.

⁶ Liz Sly, *Slain Civilians Taint U.S. Legacy in Iraq*, WASH. POST, Dec. 11, 2011, at A1; John R. Crook, *Contemporary Practice of the United States*, 106 AJIL 138, 139 (2012).

For example, Chinese, Indian, and Russian companies are exploring deep seabeds for rare earth elements and valuable metals, but the United States cannot sponsor our companies to do the same. Joining the Convention will level the playing field for American companies so they have the same rights and opportunities as their competitors.

Past administrations—both Republican and Democratic—the United States military, and industry and environmental groups have all together signaled strong support for joining the Convention. It is a key piece of unfinished business. And I'm confident that the United States will soon do what over 160 other countries have already done and join the Law of the Sea Convention. Thanks to all of you for helping to make this a reality.⁷

U.S. Position on the Falkland/Malvinas Islands Dispute

Robert D. Hodgson, former Department of State geographer and a noted expert on maritime boundaries, formulated (only partially tongue in cheek) what came to be known in the Office of the Legal Adviser as Hodgson's Law: "that where there is jurisdictional uncertainty, there is oil."

Further illustrating this principle's predictive power, international oil companies increasingly view areas in the waters around the Falkland/Malvinas Islands as top prospects for off-shore oil exploration; exploratory drilling is expected to begin soon.⁸ This possibility threatens increased tension between the United Kingdom and Argentina, which dispute sovereignty over the islands and went to war in 1982 following the islands' seizure by Argentine military forces. In recent weeks, Argentine and British officials have exchanged strongly worded statements in the United Nations and other fora.⁹

In response to a press inquiry, the U.S. Department of State in January 2012 posted a brief statement on the U.S. position on the dispute.

QUESTION: Does the U.S. take a position on the recent posturing between the United Kingdom and Argentina over the Falklands?

ANSWER: This is a bilateral issue that needs to be worked out directly between the governments of Argentina and the United Kingdom. We encourage both parties to resolve their differences through dialogue in normal diplomatic channels.

⁷ U.S. Dep't of State Press Release, Video Remarks to Pew Business Roundtable on Law of the Sea Convention (Dec. 16, 2011), at <http://www.state.gov/secretary/rm/2011/12/178603.htm>.

⁸ Brian Swint, *Oil Grab in Falkland Islands Seen Tripling U.K. Reserves: Energy*, BLOOMBERG NEWS, Jan. 19, 2012, at <http://mobile.bloomberg.com/news/2012-01-19/britain-s-oil-grab-in-falkland-islands-seen-tripling-u-k-reserves-energy>; John F. Burns, *Prince's Posting in Falklands Revives Ire Before Anniversary*, N.Y. TIMES, Feb. 1, 2012, at A4.

⁹ Compare United Nations Press Release, Press Conference by the Minister for Foreign Affairs of Argentina (Feb. 10, 2012), at http://www.un.org/News/briefings/docs/2012/120210_Argentina.doc.htm ("Citing reports of a Vanguard nuclear submarine stationed in the region, he said the British Government had refused to confirm or deny them. If it was in the vicinity, it would not be the first time, he added, recalling that, in 2003, Argentina had received intelligence information about spilled nuclear materials in the Malvinas (Falklands). He noted that the United Kingdom had signed on, with a reservation, to a treaty on a nuclear-weapon-free zone in Latin America. However, it was apparently not in compliance with that instrument, unlike all the other signatories, he said."), with United Nations Press Release, Press Conference by Permanent Representative of the United Kingdom (Feb. 10, 2012), at http://www.un.org/News/briefings/docs/2012/120210_UK.doc.htm ("Argentina's allegations that the United Kingdom was deliberately increasing its military presence in the South Atlantic was 'manifestly absurd,' Mark Lyall Grant, the latter country's Permanent Representative to the United Nations, said at a Headquarters press conference today.").

We recognize de facto United Kingdom administration of the islands but take no position regarding sovereignty.¹⁰

United States and Russia Conduct Joint Inspection in Antarctica

In January 2012, U.S. and Russian personnel conducted a joint inspection of three other countries' stations, installations, and equipment in Antarctica pursuant to the Antarctic Treaty and its Environmental Protocol. The text of a U.S. Department of State press release on the inspection follows:

A joint team from the United States and the Russian Federation concluded a six-day inspection of foreign research stations, installations and equipment in Antarctica on January 28, 2012, pursuant to the Antarctic Treaty of 1959 and its Environmental Protocol. The team inspected the following stations: Concordia (France/Italy), Mario Zucchelli (Italy) and Scott Base (New Zealand).

Officials from the U.S. Department of State and the Russian Federation Ministry of Foreign Affairs led the inspection.

The U.S.-Russia team examined the Treaty Parties' adherence to their obligations, including with respect to limiting environmental impacts, ensuring that Antarctica is used only for peaceful purposes and that Parties honor the prohibition on measures of a military nature.

The United States appreciates the assistance provided by the French, Italian and New Zealand personnel at the visited stations.

An inspection report will be jointly presented by the United States and Russia to the other Treaty Parties at the next Antarctic Treaty Consultative Meeting, to be held in Hobart, Australia, in June 2012.

For further information on the Antarctic Treaty, visit <http://www.state.gov/e/oes/ocns/opa/c6528.htm>.¹¹

Korean, Japanese Business Executives to Serve U.S. Prison Time for Antitrust Violations Committed Abroad

In two recent cases, executives of foreign companies implicated in criminal violations of U.S. antitrust laws have pleaded guilty to criminal charges and have been sentenced to imprisonment in U.S. federal prison.

In December 2011, the U.S. Department of Justice announced that three executives of a Korean disk drive producer have agreed to plead guilty to criminal violations of the U.S. antitrust laws in connection with multiple conspiracies to fix prices and rig bids on optical disk drives sold to U.S. manufacturers. The anticompetitive behavior allegedly included meetings in Taiwan and Korea and much other conduct outside of the United States. Excerpts from the Department's announcement follow:

¹⁰ U.S. Dep't of State Press Release No 2012/087, U.S. Position on the Falkland (Malvinas) Islands (Jan. 20, 2012), at <http://www.state.gov/r/pa/prs/ps/2012/01/182294.htm>.

¹¹ U.S. Dep't of State Press Release No. 2012/143, United States and Russian Federation Conclude Joint Inspection in Antarctica (Jan. 30, 2012), at <http://www.state.gov/r/pa/prs/ps/2012/01/182701.htm>.

WASHINGTON—Three Korean Hitachi-LG Data Storage Inc. (HLDS) executives have agreed to plead guilty and to serve prison time in the United States for their participation in a series of conspiracies to rig bids and fix prices for the sale of optical disk drives, the Department of Justice announced today.

According to the felony charges filed today in U.S. District Court in San Francisco, Young Keun Park, Sang Hun Kim and Sik Hur, aka Daniel Hur, conspired with co-conspirators to suppress and eliminate competition by rigging bids for optical disk drives sold to Dell Inc. and Hewlett-Packard Company (HP) and/or fixing prices for optical disk drives sold to Microsoft Corporation. The three HLDS executives participated in the conspiracies at various times between approximately November 2005 and September 2009. Under the plea agreement, Park and Kim each have agreed to serve eight months in prison and Hur has agreed to serve seven months in prison.

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According to the court documents, Dell hosted optical disk drive procurement events in which bidders would be awarded varying amounts of optical disk drive supply depending on where their pricing ranked. From approximately February 2009 to September 2009, Park and Kim participated in a series of conspiracies involving meetings and conversations with co-conspirators to discuss bidding strategies and prices of optical disk drives. As part of the conspiracies, Park, Kim and co-conspirators submitted bids at collusive and non-competitive prices and exchanged information on sales, market share and the pricing of optical disk drives to monitor and enforce adherence to the agreements.

The department said that from approximately June 2007 to March 2008, Park and co-conspirators participated in a conspiracy involving meetings and conversations in Taiwan and the Republic of Korea to discuss and to fix the prices of optical disk drives sold to Microsoft. As part of the conspiracy, Park and co-conspirators also exchanged information on the sales of optical disk drives to monitor and enforce adherence to the agreed-upon prices.¹²

In a second case, the U.S. Department of Justice announced in January 2012 that two Japanese suppliers of automotive electrical components and four of their executives had agreed to plead guilty to serious antitrust violations and that the four executives would serve time in U.S. prisons. An excerpt from the department's announcement follows:

WASHINGTON—Two Japanese suppliers of automotive electrical components—Yazaki Corporation and DENSO Corporation—have agreed to plead guilty and to pay a total of \$548 million in criminal fines for their involvement in multiple price-fixing and bid-rigging conspiracies in the sale of parts to automobile manufacturers in the United States, the Department of Justice today announced. Four executives, all Japanese nationals, have also agreed to plead guilty and to serve prison time in the United States.

Yazaki has agreed to pay a \$470 million criminal fine—the second largest criminal fine obtained for a Sherman Act antitrust violation—and DENSO has agreed to pay a \$78 million criminal fine. The four executives from Yazaki—Tsuneaki Hanamura, Ryoji Kawai, Shigeru Ogawa and Hisamitsu Takada—will serve prison time ranging from 15 months to two years. The two-year sentences would be the longest term of imprisonment imposed

¹² U.S. Dep't of Justice Press Release No. 11-1630, Three Hitachi-LG Data Storage Executives Agree to Plead Guilty for Participating in Bid-Rigging and Price-Fixing Conspiracies Involving Optical Disk Drives (Dec. 13, 2011), *at* <http://www.justice.gov/opa/pr/2011/December/11-at-1630.html>.

on a foreign national voluntarily submitting to U.S. jurisdiction for a Sherman Act anti-trust violation. The fine amount and prison sentences are subject to court approval.¹³

Official Digest of U.S. Practice in International Law for 2010 Now Available

In late December 2011, the U.S. Department of State announced the publication, in both electronic and printed form, of the 2010 volume of the Department's *Digest of United States Practice in International Law*. The Department's announcement follows:

The Department of State is pleased to announce the forthcoming publication of the 2010 *Digest of United States Practice in International Law*, covering developments during 2010. This edition of the *Digest* is available electronically on the State Department's website (www.state.gov/s/l/c8183.htm) and will be available in print on December 30, 2011.

The *Digest* traces its history back to an 1877 treatise by John Cadwalader, which was followed by multivolume encyclopedias covering selected areas of international law. The *Digest* later came to be known to many as "Whiteman's" after Marjorie Whiteman, the editor from 1963–1971. Beginning in 1973, the Office of the Legal Adviser published the *Digest* on an annual basis, changing its focus to documentation current to the year. Although publication was temporarily suspended after 1988, the office resumed publication in 2000 and has since produced volumes covering 1989 through 2010. A cumulative index covering 1989–2006 was published in 2007, and an updated edition of that index, covering 1989–2008, was published in 2010.

The *Digest*, edited by the Office of the Legal Adviser, is co-published by Oxford University Press and the International Law Institute. Annual volumes of the *Digest* for the years 2004–2010 and the updated cumulative index can be purchased from Oxford University Press Order Department, 2001 Evans Road, Cary, NC 27513, 1-800-445-9714 (phone), 1-919-677-1303 (fax), custserv@oup-usa.org. Volumes covering 1989 through 2003 can be purchased from the International Law Institute, The Foundry Building, 1055 Thomas Jefferson St. NW, Washington, D.C. 20007; contact William Mays, Publications Department, 1-202-247-6006 (phone), 1-202-247-6010 (fax).¹⁴

¹³ U.S. Dep't of Justice Press Release, Yazaki Corp., Denso Corp. and Four Yazaki Executives Agree to Plead Guilty to Automobile Parts Price-Fixing and Bid-Rigging Conspiracies (Jan. 30, 2012), at <http://www.justice.gov/opa/pr/2012/January/12-at-128.html>.

¹⁴ U.S. Dep't of State Press Release No. 2011/2181, Department of State Announces Publication of 2010 Digest of United States Practice in International Law (Dec. 21, 2011), at <http://www.state.gov/r/pa/prs/ps/2011/12/179381.htm>.