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Resolutions, Declarations, and Other Documents

Human Rights Council Resolution on the Grave Violations of Human Rights in the Occupied Palestinian Territory (Jan. 12, 2009)

[Click here](#) for document (approximately 3 pages)

The Human Rights Council, an inter-governmental United Nations body composed of 47 States in charge of addressing human rights violations and making recommendations on them, passed a Resolution “[s]trongly condemn[ing] the ongoing Israeli military operation carried out in the Occupied Palestinian Territory, particularly in the occupied Gaza Strip, which have resulted in massive violations of human rights of the Palestinian people and systematic destruction of the Palestinian infrastructure.”

The Council called “for the immediate cessation of Israeli military attacks throughout the Palestinian Occupied Territory, in particular in the Occupied Gaza Strip” and for an immediate withdraw of Israeli military from Gaza. According to the Council, the military attacks have so far killed “more than 900 and the injury to more than 4000 Palestinians, including a large number of women and children.” The Council also demanded that Israel “respect its commitment within the peace process towards the establishment of the independent sovereign Palestinian state with east Jerusalem as its capital, living in peace and security with all its neighbors.”

According to the Resolution, the siege of the Gaza Strip, which, *inter alia*, prohibited access of humanitarian aid to the territory, was in violation of international humanitarian law and had to be lifted immediately. The international community was called upon to assist in the aim of “putting an immediate end to the current military aggression in Gaza” and to the grave violations committed by Israel.

The United Nations High Commissioner for Human Rights was also requested to issue a report on the violations of human rights of the Palestinians by Israel. In addition, the Council decided to send out an independent international fact-finding mission, “to investigate all violations of international human rights law and International Humanitarian Law by the occupying Power, Israel, against the Palestinian people ... due to the current aggression, and call[ed] upon Israel not to obstruct the process of investigation and to fully cooperate with the mission.”

Thirty-three countries voted in favor of the resolution, 13 abstained from voting and only Canada voted against it.

Memorandum of Understanding Between Israel and the United States Regarding Prevention of the Supply of Arms and Related Materiel to Terrorist Groups (Jan 16, 2009)

[Click here](#) for document (approximately 2 pages)

On January 16, 2006 the United States and Israel signed the Memorandum of Understanding regarding the prevention of arms supply to terrorist groups. The agreement calls for increased “sharing of information and intelligence [between the parties] that would assist in identifying the origin and routing of weapons being supplied to terrorist organizations in Gaza.”

According to the Agreement, the U.S. will speed up “its efforts to provide logistical and technical assistance and to train and equip regional security forces in counter-smuggling tactics,” and “consult and work with its regional partners on expanding international assistance programs to affected communities in order to provide an alternative income/employment to those formerly involved in smuggling.” To this end, Israel and the U.S. will set up appropriate mechanisms that would facilitate military and intelligence cooperation. With respect to military cooperation, “the relevant mechanism will be the United States-Israel Joint Counterterrorism Group, the annual Military to Military discussion, and the Joint Political Military Group.”

The Memorandum is subject to national laws and regulations, “including those governing the availability of funds and the sharing of information and intelligence.”

National Security Presidential Directive 66 and Homeland Security Presidential Directive 25 (Jan. 9, 2009)

[Click here](#) for document (approximately 10 pages)

President George W. Bush issued National Security Presidential Directive (NSPD) 66 and Homeland Security Presidential Directive (HSPD) 25, aimed at establishing the U.S. policy and implementation mechanisms pertaining to the Arctic region.

According to the background section, the four following major developments in the Arctic region have prompted the Directive: 1) the transformation of the homeland security and defense policies and structure; 2) climate change and growing human activity in the Arctic region; 3) the establishment and the work done by the Arctic Council; and 4) increased understanding of the Arctic region's natural makeup.

The Directive lists several policy aims, including 1) the national security and homeland security needs relevant to the Arctic region; 2) the protection of the Arctic environment and conservation of its biological resources; 3) assurance that natural resource management and economic development in the region will be environmentally sustainable; 4) agreement on institutional growth for cooperation among the eight Arctic nations; 5) the involvement of the Arctic's indigenous communities in decisions that affect them; and 6) improved scientific monitoring and research of the local, regional, and global environmental issues.

The Directive emphasizes U.S.'s concern relating to national security issues in the Arctic such as "missile defense and early warning; deployment of sea and air systems for strategic sealift, strategic deterrence, maritime presence, and maritime security operations; and ensuring freedom of navigation and overflight." The Directive states that the U.S. will work "either independently or in conjunction with other states to safeguard these interests," and noted that the U.S. "also has fundamental homeland security interests in preventing terrorist attacks and mitigating those criminal or hostile acts that could increase the United States vulnerability to terrorism in the Arctic region." The Directive makes note of the fact that the Arctic region "is primarily a maritime domain; as such, existing policies and authorities relating to maritime areas continue to apply, including those relating to law enforcement." However, since human activity in this area is growing and will continue to grow, the U.S. must "assert a more active and influential national presence to protect its Arctic interests and to project sea power throughout the region."

According to the Directive, the jurisdictional basis for U.S. authority and control in this region stems from the "lawful claims of United States sovereignty, sovereign rights, and jurisdiction in the Arctic region, including sovereignty within the territorial sea, sovereign rights and jurisdiction within the United States exclusive economic zone and on the continental shelf, and appropriate control in the United States contiguous zone."

Judicial and Similar Proceedings

Request for Interpretation of the Judgment of 31 March 2004 in the Case Concerning *Avena* and other Mexican Nationals (Mexico v. United States) (I.C.J. Jan. 19, 2009)

[Click here](#) for document (approximately 20 pages)

The International Court of Justice (ICJ) rendered its judgment in the case concerning the *Request for Interpretation of the Judgment of 31 March 2004 in the Case Concerning Avena and Other Mexican Nationals*. The Court held 1) that the issue presented by Mexico for interpretation was not a dispute according to Article 60 of the ICJ Statute, 2) that the U.S. had breached its obligations under the order indicating provisional measures in the case of *Medellin* and 3) that the continuing binding character of the obligations of the U.S. under paragraph 153(9) of the *Avena* judgment existed. However, the Court declined the request by Mexico to order the U.S. to provide guarantees of non-repetition for the remaining Mexican nationals in U.S. custody.

The main issue before the Court was paragraph 153(9) of the *Avena* judgment, wherein the Court held that "the appropriate reparation...consists in the obligation of the United States of America to provide, by means of its own choosing, review and reconsideration of the convictions and sentences of the Mexican nationals..., by taking account both of the violation of the rights set forth in Article 36 of the [Vienna] Convention [on Consular Relations] and of paragraphs 138 to 141 of [the present] Judgment." Mexico asked the Court to determine whether language in paragraph 153(9) is an obligation of result. If so, Mexico asked that the Court issue orders to the U.S. reflecting this interpretation. Mexico's application for interpretation invoked Article 60 of the ICJ Statute, which provides, *inter alia*, that "[t]he judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party."

According to Article 60, "a dispute must exist for a request for interpretation to be admissible." While the U.S. repeatedly stated that there was no dispute between the parties since it always understood paragraph 153(9) to be an obligation of result, Mexico argued that "in reality the United States does not accept that it is under an obligation of result." Consequently, according to Mexico, there was a real dispute between the parties which the Court had to solve.

The Court reviewed the arguments presented and concluded that “Mexico’s argument ...concerns the general question of the effects of a judgment of the Court in the domestic legal order of the States parties to the case in which the judgment was delivered, not the ‘meaning or scope’ of the Avena Judgment, as Article 60 of the Court’s Statute requires. By virtue of its general nature, the question underlying Mexico’s Request for interpretation is outside the jurisdiction specifically conferred upon the Court by Article 60. Whether or not there is a dispute, it does not bear on the interpretation of the Avena Judgment, in particular of paragraph 153 (9).”

Case Concerning Jurisdictional Immunities (Germany v. Italy) (I.C.J. Dec. 22, 2008)

[Click here](#) for document (approximately 13 pages)

On December 22, 2008 Germany instituted proceedings before the International Court of Justice (ICJ) against Italy, alleging that “Italian judicial bodies have repeatedly disregarded the jurisdictional immunity of Germany as a sovereign state” by allowing cases based on violations of international humanitarian law by the German Reich during World War II to be adjudicated before Italian courts.

While Germany alleges that claims against Germany for harm suffered during WWII had been numerous, it was the *Ferrini* judgment of the Corte di Cassazione in 2004 that set the “critical stage” for the current application. In *Ferrini*, Italy’s highest court held that “Italy had jurisdiction with regard to a claim ... brought by a person who during World War II had been deported to Germany to perform forced labour in the armaments industry.” Once the jurisdictional hurdle was overcome in *Ferrini*, others similarly situated instituted proceedings before Italian courts. According to Germany, “[a]ll of these claims should be dismissed since Italy lacks jurisdiction in respect of acts *jure imprii* performed by the authorities of the Third Reich for which present-day Germany has to assume international responsibility.”

Germany invokes Article 1 of the European Convention for the Peaceful Settlement of Disputes adopted by members of the Council of Europe on 29 April 1957, ratified by both parties, as the basis for the jurisdiction of the Court.

Article 1 of the Convention reads:

“The High Contracting Parties shall submit to the judgment of the International Court of Justice all international legal disputes which may arise between them including, in particular, those concerning: (a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; (d) the nature or extent of the reparation to be made for the breach of an international obligation.”

Germany has requested the Court declare that Italy:

“(1) by allowing civil claims based on violations of international humanitarian law by the German Reich during World War II from September 1943 to May 1945 to be brought against the Federal Republic of Germany, committed violations of obligations under international law in that it has failed to respect the jurisdictional immunity which the Federal Republic of Germany enjoys under international law;

(2) by taking measures of constraint against...German State property used for government non-commercial purposes, also committed violations of Germany’s jurisdictional immunity;

(3) by declaring Greek judgments based on occurrences similar to those defined above in request No. 1 enforceable in Italy, committed a further breach of Germany’s jurisdictional immunity.”

As a result, Germany asked to Court to declare that:

“(4) the Italian Republic’s international responsibility is engaged;

(5) the Italian Republic must, by means of its own choosing, take any and all steps to ensure that all the decisions of its courts and other judicial authorities infringing Germany’s sovereign immunity become unenforceable;

(6) the Italian Republic must take any and all steps to ensure that in the future Italian courts do not entertain legal actions against Germany founded on the occurrences described in request No. 1 above.”

The result of this ruling will be important not only to Germany but potentially to other countries that are facing litigation for acts committed during armed conflict.

Bourquain (E.C.J. Dec. 11, 2008)

[Click here](#) for document (approximately 13 pages)

In a criminal case referred to it by a German court pursuant to Article 35 of the Treaty on European Union, the European Court of Justice (ECJ) held that the *ne bis in idem* principle, enshrined in Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 ... is applicable to criminal proceedings instituted in a Contracting State against an accused whose trial for the same acts as those for which he faces prosecution was finally disposed of in another Contracting State, even though, under the law of the State in which he was convicted, the sentence which was imposed on him could never...have been directly enforced."

Klaus Bourquain is a German national who was tried, found guilty and sentenced to death in absentia for desertion and homicide in 1961 by a French military tribunal in Algeria. Before learning of the sentence against him, Bourquain fled to the German Democratic Republic and remained there until the end of 2001, when he was charged with murder under German Criminal Code for the same acts committed in Algeria. The penalty imposed in 1961 was unenforceable in France because it was time-barred and France had passed an amnesty law with respect to the events that took place in Algeria. Uncertain about the applicability of the *ne bis in idem* principle, which states that a person whose trial has been finally disposed of in one State in the Schengen area cannot be prosecuted for the same acts in another State, the court before which the new criminal proceeding was pending asked the ECJ to determine the applicability of the double jeopardy principle to the facts.

The Court held that the 1961 judgment in absentia was final even if the penalty could not be directly enforced. As a result, the Court concluded that a retrial would violate the *ne bis in idem* principle and that the principle did not require that the penalty be directly enforceable at the time when it is imposed. What is significant is that the penalty is no longer enforceable at the commencement of the new criminal proceeding. According to the Court, this interpretation is in accord with the aim of the Schengen *acquis*, which guarantees that no individual is prosecuted for the same acts in different member states just because that individual exercises his/her right to freedom of movement.

Güveç v. Turkey (E.Ct.H.R. Jan. 20, 2009)

[Click here](#) for document (approximately 28 pages)

The European Court of Human Rights unanimously decided that Turkey violated Article 3 (prohibition of inhuman or degrading treatment), Article 5, sections 3 and 4 (right to liberty and security), and Article 6, section 1 in conjunction with section 3(c) (right to a fair trial) of the European Convention on Human Rights, when it placed a 15-year old boy in adult prison, where he remained for five years. Referring to Article 41 (just satisfaction), the Court awarded the applicant 45,000 euros for non-pecuniary damages and 4,150 euros for costs and expenses.

According to the facts, the applicant, Oktay Güveç, a Turkish national, was arrested in 1995 on suspicion of membership in the PKK (Kurdistan's Working Party) and placed in an adult prison where he repeatedly attempted to commit suicide. That same year applicant was charged with undermining the territorial integrity of the State, an offence that carried the death sentence at that time. Two years later, in 1997, the original charge was modified and the applicant was granted a new trial in May 2001. He was found guilty of membership of an illegal organization and sentenced to eight years and four months imprisonment. The applicant appealed but the Court of Cassation upheld the applicant's conviction.

From the facts it appears that during the initial questioning by the police and the prosecutor, the applicant did not have a lawyer. Furthermore, during his retrial often the applicant and his lawyer were not present. A psychiatric evaluation done during his detention revealed that he suffered from mental problems and that he had attempted to commit suicide at least twice during imprisonment. A medical report stemming from this evaluation advised that the applicant be removed from the adult prison and placed in a special facility where his mental problems could be treated. In addition to the mental deterioration suffered at the prison, the applicant also alleged that while in police custody he was beaten, sprayed with pressurized water and given electric shocks. The applicant

complained that his detention in an adult prison and his trial before the State Security Court instead of a juvenile court were in violation of Article 3. In addition, his continued detention during the pending of his trial and the unfairness of the trial were in violation of Articles 5 (right to liberty and security) and 6 (right to a fair trial).

The Court held that “the applicant's age, the length of his detention in prison together with adults, the failure of the authorities to provide adequate medical care for his psychological problems, and, finally, the failure to take steps with a view to preventing his repeated attempts to commit suicide ... [left] no doubts that the applicant was subjected to inhuman and degrading treatment.” Furthermore, the fact that applicant was detained from the age of fifteen and was kept in pre-trial detention for a period in excess of four and a half years, satisfied the Court that there was a violation of Article 5, section 3 of the Convention. Finally, the Court found that there was *de facto* lack of legal assistance for most of the proceedings and that the applicant was unable to participate effectively in his trial, which amounted to a violation of Article 6, section 1 of the Convention in conjunction with Article 6, section 3(c).

Briefly Noted

Maritime Delimitation in the Black Sea (Romania v. Ukraine) Court to Deliver Its Judgment on Tuesday 3 February 2009 (I.C.J. Press Release, Jan. 16, 2008)

[Click here](#) for ICJ press release (approximately 2 pages); [click here](#) for application by Romania (approximately 112 pages)

According to an International Court of Justice press release, the Court will deliver its Judgment in the case concerning Maritime Delimitation in the Black Sea (Romania v. Ukraine) on February 3, 2009.

In 2004, Romania filed an Application instituting proceedings against Ukraine “concern[ing] the establishment of a single maritime boundary between the two States in the Black Sea, thereby delimiting the continental shelf and the exclusive economic zones appertaining to them.” Ukraine and Romania signed a Treaty on Relations of Co-operation and Good-Neighborliness and an Additional Agreement in 1997, whereby the two States agreed to resolve the boundary dispute. While the instruments entered into force in 1997 and negotiations have been ongoing, Romania claims that no solution to the boundary dispute has been found.

Romania invoked Article 4 (h) of the Additional Agreement for the Court's jurisdiction, which requires, *inter alia*, that the dispute be brought to the International Court of Justice if a party to the Agreement so requested, and if the issue could not be resolved in a reasonable time, but not later than two years after the initiation of the negotiations.

The United Arab Emirates and the United States Sign Bilateral 123 Agreement for Peaceful Nuclear Energy Cooperation

[Click here](#) for United Arab Emirates press release (approximately 2 pages) and [click here](#) for State Department's press release (approximately 2 pages)

Secretary of State Condoleezza Rice and United Arab Emirates (UAE) Foreign Minister Abdullah bin Zayed signed an agreement for cooperation between the U.S. and the UAE concerning the peaceful use of nuclear energy (123 Agreement). The agreement sets up a legal framework establishing a future U.S. – UAE civil nuclear cooperation bound by nonproliferation conditions and controls. Both parties have stated that beyond the nuclear cooperation aspect they hope that the agreement will “usher in an era of responsible nuclear energy development throughout the Middle East.”

According to the State Department press release, the “UAE's approach to development of civil nuclear energy stands in direct contrast to Iran's pursuit of nuclear capabilities incompatible with IAEA and UN Security Council resolutions.” The U.S. applauded the “UAE's renunciation of any intention to develop domestic enrichment and reprocessing capabilities in favor of long-term commitments to obtain supply of nuclear fuel from reliable and responsible international suppliers.”

Beyond the obvious practical benefits both parties will reap from this partnership, the State Department has

stated that the agreement “can serve as a model for other countries in the region in pursuing responsible civil nuclear energy development undertaken in full conformity with nonproliferation commitments and obligations.”

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