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Resolutions, Declarations, and Other Documents

Organization of American States General Assembly Resolution on the Political Crisis in Honduras (July 1, 2009)

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

On July 1, 2009, the Organization of American States General Assembly adopted a resolution “vehemently [condemning] the coup d’état staged against the constitutionally established Government of Honduras, and the arbitrary detention and expulsion from the country of the constitutional president José Manuel Zelaya Rosales, which has produced an unconstitutional alteration of the democratic order.” The General Assembly “reaffirm[ed] that President José Manuel Zelaya Rosales is the constitutional President of Honduras” and “demand[ed] the immediate, safe, and unconditional return of the President to his constitutional functions.”

Furthermore, the General Assembly noted that any new “government arising from this unconstitutional interruption will [not] be recognized.” Finally, the Secretary General was instructed “to undertake, together with representatives of various countries, diplomatic initiatives aimed at restoring democracy and the rule of law and the reinstatement of President Jose Manuel Zelaya Rosales, pursuant to Article 20 of the Inter-American Democratic Charter and report to the Special General Assembly on the results of the initiatives.”

Because the diplomatic initiatives “prove[d] unsuccessful”, the Special General Assembly was authorized under Article 21 of the Inter-American Democratic Charter to suspend Honduras’ membership. (see Resolution in previous issue of ILIB)

ASEAN Intergovernmental Commission on Human Rights – Terms of Reference (July 19-20, 2009)

[Click here](#) for document (approximately 7 pages)

The Association of Southeast Asian Nations (ASEAN) has, by adopting the Terms of Reference for the ASEAN Intergovernmental Commission on Human Rights (AICHR) at the ASEAN Ministerial Meeting, begun the process of establishing a human rights body. The next step in this long awaited process will be at the upcoming ASEAN 15th Summit, scheduled to take place in October of this year, where ASEAN member states will appoint representatives to the body. The Terms of Reference require that each representative, who is to be determined with “due consideration to gender equality, integrity and competence,” serve for an initial three year term, with the possibility of being reappointed only once (Article 5.5).

According to the Terms of Reference, the purposes of the AICHR are:

- 1.1 To promote and protect human rights and fundamental freedoms of the peoples of ASEAN;
- 1.2 To uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity;

1.3 To contribute to the realisation of the purposes of ASEAN as set out in the ASEAN Charter in order to promote stability and harmony in the region, friendship and cooperation among ASEAN Member States, as well as the well-being, livelihood, welfare and participation of ASEAN peoples in the ASEAN Community building process;

1.4 To promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities;

1.5 To enhance regional cooperation with a view to complementing national and international efforts on the promotion and protection of human rights; and

1.6 To uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties.

It is important to note that the new institution will only act as a “consultative” body to the member states (Article 3), limited to giving “advisory” type of services, encouraging member states to ratify international human rights instruments, and generally assist the members in implementing existing human rights obligations. While this is a huge milestone for the development of human rights in Asia, many have pointed to the weaknesses and inadequacies of the new body. For example, under the Terms of Reference, the ACHR is lacking a complaint mechanism that would allow individuals to bring their human rights violation claims before the body.

WTO World Trade Report 2009 (July 22, 2009)

[Click here](#) for document (approximately 196 pages)

The World Trade Organization (WTO) has published its Report for 2009. Influenced by the current economic downturn, the report's primary focus is on “certain contingency measures available to WTO members in the import and export of goods,” including safeguard measures, antidumping, and countervailing duties. The report aims at analyzing “whether WTO provisions provide a balance between supplying governments with necessary flexibility to face difficult economic situations and adequately defining them in a way that limits their use for protectionist purposes.”

Contingency measures are often included in trade agreements to allow governments flexibility in fulfilling their commitments in unforeseeable circumstances. The report, however, notes that too much flexibility may be counterproductive and inefficient, and it advises governments to ensure that trade agreements demonstrate a balance between trade commitments and flexibility. In addition to contingency measures, the report provides several “alternative policy options, including the renegotiation of tariff commitments, the use of export taxes, and increases in tariffs up to their legal maximum ceiling or binding.”

Judicial and Similar Proceedings

United States District Court for the District of Columbia

Abdulrahim Abdul Razak Al Gingo v. Obama (June 22, 2009)

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

The United States District Court for the District of Columbia recently decided in a habeas corpus petition that the United States government had overstepped its detention authority in detaining the plaintiff, a Syrian national a.k.a. Janko, an alleged enemy combatant with links to al Qaeda and the Taliban. Judge Richard Leon critiqued the government's claim that continued detention was necessary even though evidence presented demonstrated that the petitioner had severed his ties to al Qaeda and the Taliban, who had in fact subjected him to extreme torture and 18-plus month imprisonment. Openly criticizing the government's claim that Janko was an enemy combatant despite the evidence showing otherwise, Judge Leon stated that this position “defie[d] common sense”.

According to Judge Leon, “[t]o determine whether a pre-existing relationship [to a terrorist group] sufficiently eroded over a sustained period of time, the Court must, at a minimum, look at the following factors: (1) the nature of the relationship in the first instance; (2) the nature of the intervening events or conduct; and (3) the amount of time that has passed between the time of the pre-existing relationship and the point in time at which the detainee is taken into custody.”

In Janko’s case, Judge Leon declared that “extreme treatment of that nature evinces a total evisceration of whatever relationship might have existed” and “absent proof to the contrary – which is totally lacking here – no remnant of that preexisting relationship appear to have survived.” As a result, the Court found that the government “failed to establish by a preponderance of the evidence that Janko was lawfully detainable as an enemy combatant under the AUMF [Authorization for Use of Military Force] at the time he was taken into custody, and the Court must, and will, GRANT his petition for a writ of habeas corpus and order the Government to take all necessary and appropriate diplomatic steps to facilitate his release forthwith.”

Permanent Court of Arbitration

Delimitation of the Abyei Area - Government of Sudan and the Sudan People’s Liberation Movement (July 22, 2009)

[Click here](#) for award (approximately 286 pages); [click here](#) for final award map (approximately 1 page); [click here](#) for dissenting opinion (approximately 67 pages)

The five-member Abyei Arbitration Tribunal of the Permanent Court of Arbitration in the Hague rendered its final decision in a dispute between the Sudan People’s Liberation Movement (SPLM) and the Government of Southern Sudan regarding the delimitation of the Abyei boundaries. The parties had attempted to settle the disputed border issue in 2005 when they agreed to sign the Comprehensive Peace Agreement (CPA) and appoint the Boundary Commission of Experts (Commission), which defined the Abyei area. However, the government of Sudan rejected the decision by the Commission claiming that it was not within its mandate. In April of this year, the arbitral tribunal, established pursuant to the Arbitration Agreement signed between the Sudanese government and the SPLM, and deposited with the PCA on July 11, 2008, began hearings to mediate a settlement over the disputed area.

The main issue the tribunal had to determine was whether the Commission had “exceeded its mandate” in setting the boundaries. The tribunal held that while the commission generally followed its mandate, there were instances where insufficient evidence was provided in boundary delimitation. The tribunal proceeded with making numerous boundary changes, which in the end resulted in the Heglig and Bamboo oil fields, both huge revenue generating areas, being excluded from Abyei.

While both parties have expressed their commitment to implement and respect the ruling, observers are not certain whether this decision will in fact end the dispute and lead to peace.

International Criminal Tribunal for Former Yugoslavia

Prosecutor v. Karadzic, Decision on the Accused’s Motion on Holbrooke Immunity Agreement (July 8, 2009)

[Click here](#) for document (approximately 30 pages)

The International Criminal Tribunal for Former Yugoslavia (ICTY) rejected Radovan Karadzic’s immunity claim.

Karadzic has on numerous occasions challenged the tribunal’s jurisdiction “on the basis of existence of an agreement between himself and representatives of the Government of the United States of America..., preliminary Richard Holbrooke, that he would be immune from such prosecution if he withdrew from public life in mid-1996.”

On December 17, 2008, the trial chamber issued a decision holding that it was “well established that any

immunity agreement in respect of an accused indicted for genocide, war crimes and/or crimes against humanity before an international tribunal would be invalid under international law.” Furthermore, “in the absence of any materials to link the alleged Agreement with the Prosecution and/or the UNSC [United Nations Security Council], the Chamber held that the information that the Accused might intend to use in support of it was not material to the preparation of the defence in this respect.”

In his renewed motion, denied here, Karadzic attempted to demonstrate that missing link. According to Karadzic, Holbrooke had “acted with the actual or apparent authority of the UNSC” and as a result the immunity agreement amounted to a “specific cooperation agreement”. The tribunal dismissed Karadzic’s claim, stating no such authority existed and that in fact the Security Council had on numerous occasions reiterated that Karadzic had to stand trial for the alleged crimes committed.

The tribunal also denied Karadzic’s motion that the trial be dismissed because his due process rights were violated.

Prosecutor v. Haraqija & Morina - Appeals Chamber Judgment (July 23, 2009)

[Click here](#) for document (approximately 31 pages)

The appeals chamber of the International Criminal Tribunal for Former Yugoslavia issued a decision reversing the trial chamber’s conviction for contempt of Astrit Haraqija and affirming the conviction of Bajrush Morina for contempt for intimidating a witness.

In December 2008, the trial chamber found the two Kosovar Albanians guilty of contempt for intimidating a witness, and sentenced Haraqija, a former Kosovo minister for Culture, Youth, and Sport, to five months imprisonment, and Morina, a former political advisor to the Deputy Minister of Culture, Youth, and Sport and a part-time journalist, to three months imprisonment. According to the trial chamber, Haraqija “exercised his influence over Morina to instruct him” to meet and intimidate a witness Haraqija knew was a witness in the trial against him. A recording of the meeting demonstrated that Morina had informed the witness that other witnesses testifying against Haraqija were killed. There was no other evidence, beside the secretly recorded conversation between the witness and Morina, tying Haraqija to the intimidation. However, the trial chamber found that “Haraqija’s role in the crime . . . was sufficiently corroborated” and found him guilty of contempt. The appeals chamber disagreed, holding that the trial chamber “erred in placing decisive weight in convicting Haraqija on the untested evidence emanating from Morina.” The appeals chamber then reversed the conviction.

Morina also appealed his conviction, claiming that the secret recording exposing his attempt to intimidate the witness was illegal under both domestic and international law and that the trial chamber erred in admitting evidence from an interrogation that was suspect. The appeals chamber found that the secret recording was not a violation of international or domestic law and that all procedural safeguards were in place and followed during the interrogation. The appeals chamber upheld Morina’s conviction.

Prosecutor v. Milan Lukic & Sredoje Lukic (July 20, 2009)

[Click here](#) for document (approximately 360 pages)

The trial chamber of the International Criminal Tribunal for Former Yugoslavia issued a judgment in the case of Milan Lukic and Sredoje Lukic, former Bosnian Serb paramilitaries accused of murder, torture and extermination committed against Bosnian Muslims in the Bosnian town Visegrad during the 1992-1995 conflict.

The two were charged with numerous crimes against humanity and violations of the laws and customs of war. The judges were especially horrified about two separate incidents where the defendants allegedly forced about 140 individuals into two houses, set fire to the houses, and blocked all exits. Most people, including women and children, died in the fires. Some of the survivors testified against the defendants at trial. The Tribunal noted that “[a]t the close of the twentieth century, a century marked by war and bloodshed on a colossal scale, these horrific events stand out for the viciousness of the incendiary attack, for the obvious premeditation and calculation that defined it, for the sheer callousness and brutality of herding, trapping and locking the victims in the two houses, thereby rendering them helpless in the ensuing inferno, and for the degree of pain and suffering inflicted on the victims as they were burnt alive. There is a unique cruelty in expunging all traces of the individual victims which must heighten the gravity ascribed to these crimes.”

The Trial Chamber sentenced Milan Lukic to life and Sredoje Lukic to 30 years imprisonment.

International Court of Justice

Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua) (July 13, 2009)

[Click here](#) for document (approximately 58 pages)

The International Court of Justice (ICJ) issued its judgment in the case concerning the Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua), holding that Costa Rica has navigational rights on the San Juan River under the 1858 Treaty, so long as such navigation is for purposes of commerce.

The dispute between the parties commenced on September 29, 2005 when Costa Rica filed an application instituting proceedings against Nicaragua with regard to a “dispute concerning navigational and related rights of Costa Rica on the San Juan River”. Costa Rica instituted the action because the parties were in disagreement as to the legal basis for Costa Rica’s free navigation and its extent.

The Court upheld the right of Nicaragua to regulate the waters, so long as such regulation fulfills the following characteristics:

- (1) it must only subject the activity to certain rules without rendering impossible or substantially impeding the exercise of the right of free navigation;
- (2) it must be consistent with the terms of the Treaty, such as the prohibition on the unilateral imposition of certain taxes in Article VI;
- (3) it must have a legitimate purpose, such as safety of navigation, crime prevention and public safety and border control;
- (4) it must not be discriminatory and in matters such as timetabling must apply to Nicaraguan vessels if it applies to Costa Rican ones;
- (5) it must not be unreasonable, which means that its negative impact on the exercise of the right in question must not be manifestly excessive when measured against the protection afforded to the purpose invoked.

The Court approved that the right to navigate the San Juan River includes the right to transport passengers, including tourists. The prior requirement of first obtaining a visa or tourist card from Nicaragua was also struck down. Furthermore, under the judgment, individuals living on the banks of the San Juan River have the right to navigate the waters for daily tasks and needs. And while official vessels can be used to provide essential services to these inhabitants, the Court unanimously held that Costa Rica did not have the right to carry out police functions on the river.

With respect to Nicaragua’s right to regulate navigation on the river, the Court upheld the Nicaraguan practice of stopping vessels at the first and last Nicaraguan post on their route along the San Juan River and asking for identification documents from those onboard. The Court also upheld the practice of issuing certificates to vessels navigating the river, but found the fee imposed in conjunction with such certificates to be in violation of the Treaty. In addition, the Court found the practice of requiring Costa Rican vessels to display a Nicaraguan flag not in violation of the Treaty. Finally, the Court also upheld Nicaragua’s right to impose timetables for navigation on vessels navigating on the San Juan River.

Briefly Noted

Denunciation of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) from the Republic of Ecuador

[Click here](#) for document (approximately 1 page)

The Republic of Ecuador submitted on July 6, 2009 a written notice denouncing the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention). The denunciation will take effect on January 7, 2010, six months after Ecuador's notice of denunciation.

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