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Resolutions, Declarations, and Other Documents

Protocol on Development of Relations Between The Republic of Turkey and The Republic of Armenia and Protocol on the Establishment of Diplomatic Relations between The Republic of Turkey and The Republic of Armenia

[Click here](#) for both Protocols (approximately 4 pages)

Armenia and Turkey have recently made public two Protocols, which are meant to serve as a framework for future political and diplomatic cooperation between the two countries.

The Protocols, the result of an ongoing negotiation process mediated by Switzerland, will have to be signed and ratified by the two countries before they come into force.

Under the Protocol on Development, the parties “agree to open the common border within two months after the entry into force” of the Protocol and improve their current political relationship by: 1) “conduct[ing] regular political consultations,” 2) “implement[ing] a dialogue on the historical dimension,” 3) “develop[ing] the bilateral legal framework . . . to foster cooperation,” 4) “cooperat[ing] in the field of science and education,” 5) “establish[ing] consular cooperation,” and 5) “tak[ing] concrete measures...to develop trade, tourism and economic cooperation.” In addition, an intergovernmental bilateral commission will be established to implement the parties’ commitments.

Under the Protocol on the Establishment of Diplomatic Relations, wherein the parties confirm their “respect for the principle of equality, sovereignty, non-intervention in internal affairs of other states, territorial integrity and inviolability of frontiers,” the parties agree to base their new cooperation on “common interests, goodwill and in pursuit of peace, mutual understanding and harmony.”

United Nations Fact Finding Mission Report on the Gaza Conflict and United Nations Human Rights Council Resolution on the Gaza Conflict

[Click here](#) for document (approximately 574 pages); [click here](#) for UN Human Rights Council Resolution (approximately 5 pages)

The four-member [United Nations Fact-Finding Mission](#) investigating “all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after” has issued its report detailing widespread violations of international human rights and humanitarian law. The report finds that the evidence, comprised of detailed examination of a number of incidents in Gaza, West Bank, and Israel; thousands of pages of documentation; and hundreds of interviews, indicates that both parties committed “actions amounting to war crimes, and possibly crimes against humanity.”

Noting Israel’s continued refusal “to conduct serious investigations into all allegations of violations,” the Mission has called upon the United Nations Security Council to “[t]o take all appropriate steps, within a period of three months, to launch appropriate investigations that are independent and in conformity with international standards, into the serious violations of International Humanitarian and International Human Rights Law reported by the Mission.” If such investigations are not carried out, the report continued, the Security Council should refer “the situation in Gaza to the Prosecutor of the International Criminal Court pursuant to Article 13 (b) of the Statute of the International Criminal Court.”

The Fact-Finding Mission was established on April 3, 2009 by the President of the Human Rights Council to investigate the Gaza Conflict. Justice Richard Goldstone, former judge of the Constitutional Court of South Africa

and former Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda, heads the Mission.

The Statute of the International Renewable Energy Agency (IRENA)

[Click here](#) for document (approximately 27 pages)

The International Renewable Energy Agency (IRENA), a multilateral organization devoted to renewable energy, was founded on January 26, 2009 in Bonn, Germany, with 75 states signing the IRENA Statute. As of this writing, 136 States have signed the Statute, including the United States.

The primary aim of the organization is “to promote the widespread and increased adoption and use of renewable energy with a view to sustainable development.” To this end, it has set up a legal framework where member state representatives participate in the three IRENA bodies: 1) the Assembly; 2) the Council and 3) the Secretariat. The Assembly, composed of all member states and the supreme organ of the agency, elects the Council, which assists the Assembly in carrying out its mandate. The Secretariat is the administrative body of the organization and assists the Assembly and the Council.

All member states must contribute to the organization’s budget, “based on a scale of assessments of the United Nations, as determined by the Assembly.” Members who fail to pay their dues can lose their vote.

For more information on the organization and its mandate, please visit the official [IRENA website](#).

Judicial and Similar Proceedings

International Criminal Tribunal for the former Yugoslavia

In the Case Against Florence Hartmann, Judgment (Sept. 14, 2009)

[Click here](#) for document (approximately 33 pages); [click here](#) for the ICTY information sheet (approximately 4 pages); [click here](#) for the Judgment Summary (approximately 4 pages)

A Specially Appointed Chamber of the International Criminal Tribunal for the former Yugoslavia has issued its final judgment in the case against Florence Hartmann, a French journalist and a former Spokesperson for the Prosecutor of the Tribunal, finding the author guilty on two separate counts of contempt under Rule 77(A)(ii) of the Rules of Procedure and Evidence of the Tribunal for “knowingly and willfully interfering with the Tribunal’s administration of justice by disclosing information in violation of an Order of the Appeals Chamber.” The Chamber sentenced Hartmann to pay a fine of 7,000 Euros by November 14, 2009.

In calculating the sentence, the Chamber took into consideration several “aggravating” factors, including the level of “risk of interference with the Tribunal’s administration caused by the Accused,” the negative impact on cooperation by states as a result of Hartmann’s conduct, the harm done to “public confidence in the effectiveness of protective measures, orders and decisions,” and the “need to deter future wrongful disclosure.” The Chamber also considered several mitigating factors, such as the fact that some information published by Hartmann was in the public domain, that she made no real commercial gain from her publications, and that she cooperated with the Tribunal through the trial.

International Criminal Court

Prosecutor v. Jean-Pierre Bemba Gombo, Decision on the Request of the Prosecutor for Suspensive Effect (Sept. 3, 2009)

[Click here](#) for document (approximately 8 pages); [click here](#) for earlier Decision on the Interim Release of Jean-Pierre Bemba Gombo and Convening Hearings with the Kingdom of Belgium, the Republic of Portugal, the Republic of France, the Federal Republic of Germany, the Italian Republic, and the Republic of South Africa (Aug. 14, 2009) (approximately 37 pages)

On September 3, 2009, the International Criminal Court Appeals Chamber granted suspensive effect to the Prosecutor's appeal against the decision on the interim release of Jean-Pierre Bemba Gombo, thus rejecting the defendant's argument that the Prosecutor's application for suspensive effect "lack[ed] basis" because the requirements of Article 58(1)(b) of the Statute were not met and it was "premature." As a result, the decision on interim release will remain suspended until a decision on the merits of the Prosecution's appeal is issued.

On August 14, 2009, Pre-Trial Chamber II granted Jean-Pierre Bemba Gombo's request for conditional interim release, finding that requirements for continued detention under Article 58(1)(a) and (b) of the Rome Statute were no longer satisfied. The Pre-Trial Chamber II determined that continued detention was no longer necessary, because it would not be required in order to ensure that 1) the defendant will appear at his trial, 2) he will not obstruct or endanger the investigation against him, and 3) he will not continue to commit crimes related to or arising out of the investigation.

International Centre for Settlement of Investment Disputes

Europe Cement Investment and Trade S.A v. Republic of Turkey Award (Aug. 13, 2009)

[Click here](#) for document (approximately 36 pages)

An International Centre for Settlement of Investment Disputes (ICSID) tribunal dismissed for lack of jurisdiction a claim brought by a Polish company, Europe Cement Investment & Trade ("Europe Cement" or "claimant"), against Turkey. The Tribunal ordered the claimant to pay respondent's arbitration costs. While the Tribunal found that "there was no investment at all" and the claimant's production of fraudulent documents showed "lack of good faith," it nonetheless decided not to make the declaration that there was an abuse of process and refused to award monetary compensation to Turkey.

The dispute involved the Claimant's alleged interest in two Turkish electricity corporations. Europe Cement claimed that in 2003 the Turkish Ministry of Energy unlawfully terminated concession agreements granted to Europe Cement subsidiaries for the generation, transmission, distribution, and marketing of electricity in certain parts of Turkey. According to Europe Cement the termination of the agreements amounted to expropriation of property contrary to Article 13 of the Energy Charter Treaty, and that "Turkey had failed to accord Europe Cement fair and equitable treatment contrary to Article 10 (1) of the Energy Charter Treaty." However, Europe Cement never demonstrated that they legally obtained the shares and both parties requested the Tribunal to dismiss the case for lack of jurisdiction." Respondent, on the other hand, argued that "the failure of Europe Cement to comply with the orders of the Tribunal for the productions of documents . . . [meant] that Europe Cement did not own the shares in question and that its claim was fraudulent." In addition, the respondent argued that the claimant's conduct was "abuse of process" and requested that the Tribunal issue a declaration that "there has been such an abuse."

The Tribunal first noted that "declaratory relief is a common form of relief in international tribunals in state-to-state cases, but [that] no cases were cited . . . of tribunals established under the ICSID Convention or Additional Facility or under international investment treaties more generally where declarations were granted as a form of relief." Moreover, the Tribunal stated evidence showed that "claimant did not own shares in CEAS and Kepez at the relevant date of 12 June 2003," which "mean[t] that there is no investment on which this claim can be based and the Tribunal has no jurisdiction to hear this dispute."

The Federal Court of Australia

Snedden v. Republic of Croatia (Sept. 4, 2009)

[Click here](#) for document (approximately 26 pages)

The Federal Court of Australia has allowed Daniel Snedden, a dual Australian and Serbian citizen, and a former commander of a Serbian paramilitary group that engaged in armed conflict in Croatia, the right to appeal a single judge decision allowing his extradition to Croatia for alleged war crimes. The Court found that “there are substantial grounds for believing that he may be ‘*punished*’ or imprisoned and thereby ‘*detained*’ or ‘*restricted in his personal liberty*’ and that such treatment arises ‘*by his...national or political opinions.*” To support its decision, the Court cited two reports issued by the Organization for Security and Co-Operation in Europe (OSCE), a regional security organization, which had noted that Croatian courts, in sentencing individuals for crimes committed during the conflict in question, considered a defendant’s defense of Croatia against armed aggression a mitigating factor in determining the prison sentence. As a result of this practice, members of Croatian armed forces found guilty of crimes committed in the conflict received lesser sentences than former members of the Serb armed forces. While Croatia did not dispute that instances of such disparity had occurred in the past, it argued that the country’s Supreme Court had not approved the practice, nor was there “positive or general approval” of such conduct.

Briefly Noted

Chile Becomes Newest State Party to the Rome Statute (Sept. 1, 2009)

[Click here](#) for International Criminal Court Press Release (approximately 2 pages)

The International Criminal Court reported that the Republic of Chile has ratified the Rome Statute, which entered into force in Chile on September 1, 2009. This brings the total number of ICC State Parties to 109.

While this development does not give the Court jurisdiction to try those responsible for crimes committed during the military rule in Chile between 1973 and 1990, observers, such as [Amnesty International](#), have called the ratification “a positive step that clearly signals a rejection of impunity.”

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Authora:

- Djurdja Lazic, Esq., ILIB Managing Editor
- Maria A. Taurisani, LL.M., ILIB Research Assistant

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To comment on this publication, send an e-mail message to Djurdja Lazic, ILM Managing Editor at dlazic@asil.org