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Resolutions, Declarations, and Other Documents

African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Oct. 23, 2009)

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

On October 23, 2009, the African Union (AU) approved the Convention for the Protection and Assistance of Internally Displaced Persons in Africa. The Convention will come into force within 30 days of ratification by fifteen of the fifty-three AU member states. The Convention aims to “[p]romote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions” and to “[e]stablish a legal framework for preventing internal displacement, and protecting and assisting internally displaced persons in Africa.”

The adoption of the Convention is a major regional human rights development which had as its basis the [Guiding Principles on Internal Displacement](#) (Guiding Principles) initially promulgated in 1998. The Guiding Principles, founded on international humanitarian and human rights law, are guidelines used by international organizations and governments to effectively help and protect IDPs. According to the Guiding Principles, IDPs are

persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

The reliance on the Guiding Principles is clear from the text of the Convention. Like the Guiding Principles, the Convention obligates all member states to protect IDPs in any type of armed internal conflict or natural disasters, including “[d]isplacement caused by any act, event, factor, or phenomenon of comparable gravity to all of the above and which is not justified under international law, including human rights and international humanitarian law” (*cf.* Convention, Article 4(4)(h) and Guiding Principles, Scope and Purpose, para. 2).

While the Convention is a big step toward codifying the Guiding Principles, some have criticized its weak accountability mechanism. This is especially troubling given that more than eleven million internally displaced persons are in Africa.

Memorandum of Understanding on Antitrust Cooperation Between United States Federal Trade Commission, the United States Department of Justice and the Russian Federal Anti-monopoly Service

[Click here](#) for document (approximately 3 pages); [click here](#) for press release (approximately 1 page)

On November 10, 2009, the Federal Trade Commission (FTC) and U.S. Department of Justice signed a Memorandum of Understanding (MOU) with the Federal Antimonopoly Service, the Russian antitrust agency, agreeing to strengthen antitrust cooperation between the agencies.

The two key provisions relate to cooperation, with the parties agreeing to share information on competition policy and enforcement developments; and to communications, committing the parties to consult and provide advice on enforcement and policy.

Notably, while MOUs are common practice for the U.S. government, according to the FTC press release, “this is the first antitrust cooperation MOU entered into on a direct agency-to-agency basis.”

Guidelines for Implementation of the WHO Framework Convention on Tobacco Control (2009)

[Click here](#) for document (approximately 77 pages)

The Framework Convention on Tobacco Control (FCTC) is “the world’s first global public health treaty, [which] requires parties to adopt a comprehensive range of measures designed to reduce the devastating health and economic impacts of tobacco.” It was adopted by the World Health Assembly, the plenary body of the World Health Organization, in May 2003 and entered into force in February 2005. Despite initial doubts about its

feasibility, it has proven to be a very successful legal instrument from the point of view of its participation, with 168 Parties as of November 13, 2009.

Article 7 of the Convention requires the Conference of the Parties (COP) to propose guidelines meant to facilitate the implementation of the Convention, in particular with regard to non-price measures to reduce tobacco consumption. In November 2008, the COP adopted four Guidelines for the Implementation of Articles 5.3, 8, 11 and 13. These Guidelines were recently published and are particularly interesting as they touch on legally and politically sensitive issues: relations between the governments of states parties and the tobacco industry (Article 5 of the FCTC); and the prohibition or restriction of tobacco advertising, promotion and sponsorship (Article 13 of the FCTC).

The Guidelines on Article 5.3 are based on the idea that the tobacco industry should play no role in determining public health policy and that, based on the industry's past record of trying to undermine effective tobacco control policies in many countries, contacts between the industry and public authorities should be limited, transparent and handled in a way that avoids conflicts of interest or the perception of a partnership. This principle is very difficult to apply in countries where the government is actively involved in the tobacco industry.

From an international law perspective, the Guidelines could implicate several other legal regimes, including trademark rights under the World Intellectual Property Organization (WIPO) conventions, trade issues under the General Agreement on Tariffs and Trade (GATT) and the Agreement on Technical Barriers to Trade (TBT), and internet regulation.

(Gian Luca Burci, Legal Counsel of the World Health Organization, contributed this document and assisted with its summary.)

United Nations General Assembly Resolution on the 2008 Gaza Conflict (Nov. 5, 2009)

[Click here](#) for resolution (approximately 3 pages); [click here](#) for press release (approximately 22 pages); [click here](#) for US House of Representatives Resolution on the Goldstone Report (approximately 1 page)

The United Nations General Assembly has adopted a resolution endorsing the Human Rights Council report considering the UN Fact-Finding Mission on the Gaza Conflict Report (the Goldstone Report). According to a General Assembly press release, 114 members voted in favor and eighteen against the resolution (with forty-four abstentions).

The resolution called upon both Israel and Palestine "to undertake investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice." Furthermore, the General Assembly requested that the Secretary-General transmit the Goldstone report to the Security Council for further consideration. Finally, the Assembly recommended that the Swiss government, which serves as the depository of the Geneva Convention relating to the Protection of Civilian Persons in Time of War, "reconvene a Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with common article 1."

The Permanent Observer for Palestine declared that "[t]onight is a very important night in the history of the General Assembly, in the history of fighting impunity and seeking accountability." The delegate from Israel stated that the "resolution mocked the reality faced by democratic States, like Israel, that confronted terrorist threats." Several other states expressed criticism. The U.S. representative, who voted against the resolution, found the resolution "unconstructive" and "unnecessary."

The Goldstone report, which was issued in September of this year, has received mixed reactions. For example, the U.S. House of Representatives went so far as to adopt a non-binding resolution "Calling on the President and the Secretary of State to oppose unequivocally any endorsement or further consideration of the 'Report of the United Nations Fact Finding Mission on the Gaza Conflict' in multilateral fora."

For more background information on the Goldstone Report, see Larry Johnson's and David Kaye's Insights, available at <http://www.asil.org/insights.cfm>.

Judicial and Similar Proceedings

European Court of Human Rights

Lautsi v. Italy (Nov. 11, 2009)

[Click here](#) for decision in French (approximately 11 pages); [click here](#) for press release in English (approximately 1 page)

The European Court of Human Rights held that the display of a symbol of a given confession in a school violated Article 2 of Protocol No. 1 (right to education) and Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights.

The applicant, a mother of two school-age children, sued an Italian school for displaying crucifixes in its class rooms. She found the presence of such symbols “contrary to the principle of secularism” that she wanted to instill into her children. The case, which the applicant instituted in 2002, was dismissed in 2005 by an administrative court which held that the “crucifix was a symbol of the principles of equality, liberty and tolerance, as well as of the State’s secularism.” The applicant then instituted proceedings before the European Court in her own name and on behalf of her children, claiming that the display of the crucifix in a state school violated her right to educate her children pursuant to her own convictions. In addition, the compulsory presence of the crucifix also violated her Article 9 rights to freedom of religion and conviction.

The Court agreed, holding that the state could not impose its own beliefs and convictions on its citizens. In fact, the Court continued, the state had to “observe confessional neutrality.” According to the Court, the state should not interfere with an individual’s choice of religion nor should it restrict the rights of parents to educate their children in conformity with their own beliefs.

International Criminal Tribunal for the former Yugoslavia

Prosecutor v. Karadzic, Decision on Appointment of Counsel and Order on further Trial Proceedings (Nov. 5, 2009)

[Click here](#) for decision (approximately 12 pages)

The Trial Chamber of the International Criminal Tribunal for the former Yugoslavia has issued a decision instructing the Registrar to appoint a counsel to represent Radovan Karadzic at trial. The Chamber held that “[n]o counsel, not even the most experienced and efficient, could reasonably be expected to be in a position to assist the Accused and, by extension, the trial process, without sufficient, albeit defined, preparation time.” As a result, the Chamber concluded that “there will need to be a delay of some months before the trial can resume, if it does so with a form of appointed counsel.” The Chamber allotted the appointed counsel three and a half months to prepare for trial, meaning that Karadzic’s trial will resume on March 1, 2010. The Chamber stressed that should the “accused continue to absent himself from the resumed trial proceedings in March, or should he engage in any other conduct that obstructs the proper and expeditious conduct of the trial, he will forfeit his right to self-representation, no longer be entitled to assistance from his assigned defense team, and the appointed counsel will take over as an assigned counsel to represent him.”

Karadzic, whose trial commenced on October 26, 2009, has refused to appear in the courtroom claiming that he needs more time to prepare his defense. On several occasion, the Trial Chamber warned Karadzic that his continued absence and obstructive conduct would lead to an order assigning counsel to him and the commencement of the trial in his absence.

The Chamber cited Article 20 of the Statute of the Tribunal, which protects the rights of the accused, and Article 21, which guarantees an accused’s right to self-representation. However, the Chamber noted that an accused’s right to defend himself and be present at his trial is not absolute. If the accused acts in a way to persistently obstruct the proceedings, the Trial Chamber can remove the accused from the courtroom and appoint counsel to

represent his interest. The Chamber cited the Slobodan Milosevic case, where the Appeals Chamber curtailed the defendant's right of self-representation due to his persistent obstruction of the proceedings. The Chamber also noted that in such situations, the accused must be given formal and express warnings.

In the present situation, the Chamber found that Karadzic's behavior "has effectively brought the trial to a halt" and that the trial had to continue, with or without him.

The case has brought about an interesting discussion of the Tribunal's rules regarding self-representation. As already mentioned, the Tribunal's statute allows defendants the right to represent themselves. However, many have been critical of this principle which can arguably lead to a situation similar to the Milosevic case, where the accused used the Tribunal as a platform to discuss issues not at trial. The Trial Chamber hinted that Karadzic may also be planning to use the trial for these purposes: "The Chamber notes in . . . that the Accused . . . gave some indication that he intends, in the course of his defence, to 'correct' what has been adjudicated by this Tribunal in prior cases concerning other accused persons . . . and show who was responsible for 'the outbreak of the war.'"

European Court of Justice

Brita GmbH v. Hauptzollamt Hamburg Hafem

[Click here](#) for decision (approximately 19 pages)

The Advocate General, who assists the judges of the European Court of Justice (ECJ) in analyzing a particular case currently before the Court, has issued his opinion on a dispute regarding the origination of goods from the West Bank. While the opinion of the Advocate General is not binding on the Court of Justice, it serves as a proposal to the judges, who will issue their own independent decisions later on.

The facts are as follows. A German company, Brita, wanted to import into Germany supplies manufactured by a company based in the West Bank. The Company, in order to claim preferential treatment under the bilateral agreement between the Community and its Member States and Israel, told German customs authorities that the goods originated in Israel. The German customs authorities asked for confirmation from the Israeli authorities, which they duly provided. However, the Israeli authorities failed to answer whether the goods came from the occupied territories. As a result, the German customs refused to grant the preferential treatment to the products. Brita disagreed with this finding and sued in the German finance court, which in turn referred the issue to the European Court of Justice.

The question referred was whether goods made in the Palestinian occupied territories, the origin of which is confirmed by Israeli authorities to be from Israel, are entitled to preferential treatment under the EC-Israel agreement.

The Advocate General first noted that the administrative cooperation mechanism established by the EC-Israel agreement "is based on mutual trust between the customs authorities of the States parties to the agreement and on mutual recognition of the documents which they issue." Furthermore, there is "a presumption that the customs authorities of the exporting State are in the best position to verify directly the facts which determine the origin of the products." However, in the present case, the Advocate General found that there was no actual dispute between the parties with respect to the origin of the goods: "The main proceedings are not concerned with verifying the accuracy of information relating to the product origin that creates entitlement to preferential treatment, since the origin is known and is not contested. They are in fact concerned with ascertaining whether that origin falls within the scope of the EC-Israel Agreement." And since neither party's interpretation of the origin is exclusive, "the German customs authorities are not bound by the result of the subsequent verification carried out by the Israeli customs authorities."

Brita also claimed that the preferential treatment should be granted to producers based in the occupied territories either under the EC-Israel or the EC-Palestine Liberation Organisation agreement (the equivalent of the EC-Israel agreement). The Advocate General rejected this argument, stating that the origin of the goods and the verification of that origin is a "necessary element" of the customs system. Since the entitlement to the preferential treatment depends on the determination of the origin, the "exporting State must . . . be capable of

certifying unambiguously that the product in question does indeed come from a given State”

With respect to determining the origin of the goods, the Advocate General made reference to the Plan for the Partition of Palestine, approved on November 29, 1947 by the United Nations, which clearly separates the West Bank and the Gaza Strip from Israeli territory. Furthermore, the existence of a separate EC-PLO agreement demonstrates that the Community wanted to treat goods originating from the separate parts in a different manner. As a result, the Advocate General concluded that the EC-Israel agreement could not be applied to goods originating in the West Bank and in the occupied territories.

Briefly Noted

Desire Munyaneza sentenced to life for war crimes committed in Rwanda (Superior Court of Quebec - Oct. 29, 2009)

[Click here](#) for press release (approximately 1 page); [click here](#) for May 22, 2009 Judgment (approximately 224 pages)

The Superior Court of Quebec sentenced Desire Munyaneza, a Rwandan national, to life in prison with a chance of parole after twenty-five years for genocide, crimes against humanity and war crimes committed in Rwanda in 1994. The defendant was the first person found guilty under [Canada's 2000 War Crimes Act](#).

Munyaneza, who applied for asylum in Canada but was later identifying by authorities as an alleged perpetrator of war crimes, was accused of being a leader of a militia that had raped and killed several Tutsis, and also massacred more than 300 Tutsis in a church. Munyaneza has said that he will appeal the conviction.

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