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Resolutions, Declarations, and Other Documents

Optional Protocol to the Convention on the Safety of the United Nations and Associated Personnel Enters into Force (Aug. 19, 2010)

[Click here](#) for protocol (approximately 3 pages); [click here](#) for 1994 Convention (approximately 30 pages)

The Optional Protocol to the Convention on the Safety of the United Nations and Associated Personnel, expanding the protection of United Nations staff members and other humanitarian workers, entered into force on August 19, 2010, a month after the United Kingdom became the 22nd country to ratify it (Article VI of the Optional Protocol).

Unlike the 1994 Convention, which only applies to peacekeeping operations, the optional protocol provides legal protection to UN staff delivering emergency humanitarian assistance and providing political and development assistance in peace building situations. According to a UN press release, "[l]ast year alone, 28 civilian UN staff members were killed, according to the UN Staff Union, and at least 97 aid workers were killed, while 60 others were wounded and 92 more were abducted."

Judicial and Similar Proceedings

European Court of Human Rights

Gäfgen v. Germany (June 1, 2010)

[Click here](#) for document (approximately 52 pages)

The Grand Chamber of the European Court of Human Rights ruled in *Gäfgen v. Germany* that the German authorities' threat of torture amounted to inhuman treatment and found Germany in violation of Article 3 (freedom from torture or inhuman or degrading treatment or punishment) of the European Convention on Human Rights.

The Chamber ruled, however, that in the present case, the threat of torture was not sufficiently cruel to amount to torture.

The applicant was convicted for kidnapping and murdering an eleven-year old boy whom the applicant knew. The applicant kidnapped the boy and demanded one million Euros as ransom. He then suffocated the boy and hid his body. The police followed the applicant after he picked up the ransom and arrested him as he was attempting to leave Germany. During the initial interrogation, a police officer was instructed to threaten the applicant with bodily harm and torture in order to illicit his confession. After ten minutes, and before any actual harm was done to the applicant, he confessed to the murder and identified the location of the boy's body. The applicant was later found guilty of kidnapping and murder and sentenced to life imprisonment.

He commenced proceedings against the German government, claiming that the threat of torture amounted to violation of the German Code of Criminal Procedure and the European Convention on Human Rights. While the applicant successfully prevailed in German courts regarding his human rights claims, he was not granted compensation. He also challenged the inappropriate punishment given to the authorities that had violated his rights (both individuals were asked to pay small sums of money and were temporarily demoted).

The European Court first stressed that "Article 3 of the Convention enshrines one of the most fundamental values of democratic societies . . . [and that] no provisions for exception and no derogation from it is permissible . . . even in the event of a public emergency threatening the life of the nation." Thus, even if the authorities were hoping that a quick confession would save the boy's life (the authorities did not know that the applicant had already killed the boy), they were prohibited from threatening the applicant with torture in order to obtain information.

The applicant was awarded almost 1,800 Euros for costs and expenses.

Extraordinary Chambers in the Courts of Cambodia

Co-Prosecutors Notice of Appeal Against the Judgment of the Trial Chamber in the Case of Kaing Guek Eav *Alias* Duch (Aug. 16, 2010)

[Click here](#) for Notice of Appeal (approximately 3 pages); [click here](#) for Trial Chamber Judgment (approximately 268 pages)

The Co-Prosecutors in the Extraordinary Chambers in the Courts of Cambodia ("ECCC") have filed a notice of appeal against the recent Trial Chamber judgment convicting Kaing Guek Eav ("Duch") of grave breaches of the Geneva Conventions and crimes against humanity. The Co-Prosecutors challenge the judgment on three separate grounds: 1) the length of the sentence (thirty-five years); 2) the Trial Chamber's decision not to convict Duch "cumulatively for the crimes against humanity of enslavement, imprisonment, torture, rape, extermination . . . and, other inhumane acts;" and 3) the Trial Chamber's misapplication of law regarding the crime of enslavement.

Regarding the first ground of appeal, the Co-Prosecutors argue that the sentence imposed "gives insufficient weight to the gravity of the 'crimes of a particular shocking and heinous character' committed by Duch, his role and willing participation in those crimes and, other aggravating circumstances." In addition, the Co-Prosecutors argue that the sentence "is arbitrary and manifestly inadequate and [falls] outside the range of sentences available." With respect to the second ground, the Co-Prosecutors challenge the Trial Chamber's decision to characterize the crime against humanity of rape as torture, instead of convicting Duch for both rape and torture. Finally, the Co-Prosecutors maintain that the Trial Chamber committed an error of law by using a wrong definition and requirements for enslavement.

Duch, the first person to stand trial before the ECCC, was sentenced on June 26, 2010 to thirty-five years imprisonment; however, the Trial Chamber reduced his sentence by five years for the time he was illegally detained before the ECCC was established, and by another eleven years for the time he was in custody prior to commencement of his trial. Duch was Deputy and Chairman of S-21, a security camp that was tasked with interrogating and executing alleged enemies of Democratic Kampuchea.

United Nations Dispute Tribunal

Bertucci v. Secretary-General of the United Nations (May 14, 2010)

[Click here](#) for decision (approximately 16 pages)

The United Nations Dispute Tribunal, established by the UN General Assembly and operational since July 1, 2009, has issued a decision in *Bertucci v. Secretary-General*, criticizing the disciplinary proceedings against a former staff member and awarding him compensation for violation of his due process rights. This decision is important because it sheds some light on the administrative procedures within the UN and the inefficient manner in which some disputes are handled internally.

As the decision in *Bertucci* highlights, the judges appointed by the General Assembly to hear complaints by the UN staff have openly disapproved of the UN's continued violation of the Tribunal's orders, including orders to allow staff members access to information necessary for their cases. In *Bertucci*, the applicant, a former UN employee, was informed shortly before his retirement from the UN that almost \$14,000 would be withheld from him due to "pending disciplinary proceedings concerning allegations of mismanagement that had resulted in financial loss." The applicant complained that he was unable to answer the charges against him because important background information in the form of an internal report was withheld by the UN. He also asked that his contract with the UN be extended until the matter was completely resolved. The organization, however, continued to withhold the requested report and rejected the applicant's request for extension of his employment contract.

Judge Adams, who was hearing the case and whose decision is final and binding, pointed out that mandatory

disciplinary measures and procedures were not followed in *Bertucci*, leading to an "extremely unfortunate" situation for both the UN and the applicant. Furthermore, the continued uncertainty surrounding the applicant's case only worsened his position: "The applicant here is in an impossible position, entirely resulting from the Administration's own making, although it is impossible to deduce whether its delay is caused by indecision about whether to proceed at all or, perhaps, what is the appropriate process for doing so."

In the end, Judge Adams found that the applicant's procedural rights were violated but that the funds were appropriately withheld:

[T]he preponderance of evidence establishes that the applicant's entitlements were lawfully withheld, in that the report disclosed matters which were objectively capable of justifying the conclusion that there was *reason to believe* he had been guilty of gross negligence resulting in financial loss, even though he may, on fuller examination of the relevant facts, have been found to be entirely innocent.

Judge Adams awarded the applicant \$500 as compensation.

Briefly Noted

New ASIL *Insight: Lawfulness of Kosovo's Declaration of Independence* by Bart M. J. Szewczyk (Aug. 17, 2010)

[Click here for Insight](#) (approximately 7 pages); [click here for Insights Archives](#)

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