



WWW.ASIL.ORG
©2008

INT'L LAW IN BRIEF

Developments in international law, prepared by the Attorney Editor of International Legal Materials
American Society of International Law

February 20, 2009

[PDF](#) [Click here to view this issue of ILIB in a printable PDF.](#)

Resolutions, Declarations, and Other Documents

- Safer Social Networking Principles for the EU (Feb. 10, 2009)
- United Nations Security Council Resolution 1866 Renews UN Georgian Mission (Feb. 13, 2009)
- Agreement of Goodwill and Confidence-Building for the Settlement of the Problem in Darfur (Feb. 17, 2009)

Judicial and Similar Proceedings

- Prosecutor v. Karadzic – Decision on Prosecution Motion to Amend the First Amended Indictment (I.C.T.Y. Feb. 16, 2009)
- Seagon v. Deko Marty Belgium NV (E.C.J. Feb. 12, 2009)
- Allianz SpA et al. v. West Tankers Inc. (E.C.J. Feb. 10, 2009)
- Kozacioglu v. Turkey (Eu. Ct. H.R. Feb. 19, 2009)
- A. and Others v. U.K. (Eu. Ct. H.R. Feb. 19, 2009)
- Decision on the Application to Have Names Removed from the Consolidated List of the United Nations Sanctions Committee (Human Rights Committee, Oct. 29, 2008)

Briefly Noted

- Japan and Swiss Confederation Agreement on Free Trade and Economic Partnership (Feb. 17, 2009)
- Russia/Ukraine 10-Year Gas Supply Deal (Jan. 19, 2009)
- Extraordinary Chambers in the Courts of Cambodia Opens Trial Against Khmer Rouge Official for Cambodian Atrocities (Feb. 12, 2009)
- Judge Hisashi Owada (Japan) Elected President of the International Court of Justice; Judge Peter Tomka (Slovakia) elected Vice-President (I.C.J. Feb. 6, 2009)

- [United States Joins Four Law of War Treaties \(Jan. 21, 2009\)](#)

****Educational copying is permitted with due acknowledgment***

Resolutions, Declarations, and Other Documents

Safer Social Networking Principles for the EU (Feb. 10, 2009)

[Click here](#) for document (approximately 14 pages)

The EU issued on February 10, 2009 the Safer Social Networking Principles (Principles) aimed at providing “good practice recommendations for the providers of social networking and other user interactive sites,” and enhancing “the safety of children and young people using their services.” The Principles are the end result of a joint effort between the Social Networking Services (SNS) providers and the European Commission.

According to the Principles, which are “aspirational and not prescriptive or legally binding,” SNS providers should utilize the “range of good practice approaches” outlined therein as a guide to decrease possible harm to children and young adults.

The seven principles are as follows: 1) Raise awareness of safety education messages and acceptable use policies to users, parents, teachers and carers in a prominent, clear and age-appropriate manner; 2) Work towards ensuring that services are age-appropriate for the intended audience; 3) Empower users through tools and technology; 4) Provide easy-to-use mechanisms to report conduct or content that violates the Terms of Service; 5) Respond to notifications of illegal content or conduct; 6) Enable and encourage users to employ a safe approach to personal information and privacy; and 7) Assess the means for reviewing illegal or prohibited content/conduct.

Recognizing that the SNS industry is diverse, ranging “from large global providers to smaller locally run services,” providers are encouraged “in determining their own safety strategies, ...[to] take into account the particular nature of their services in order to apply the relevant recommendations of these Principles.”

United Nations Security Council Resolution 1866 Renews UN Georgian Mission (Feb. 13, 2009)

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

United Nations Security Council extended the UN mandate to Georgia until June 15, 2009. In the meantime, the Security Council requested that the Secretary General issue a report to the Council detailing the implementation of the resolution, specifically focusing on the situation in the area and the activities by the UN. The Council also expressed its intent to issue an outline by June 15, 2009 regarding the scope of the future UN presence in the region, “taking into account the recommendations to be contained in the report of the Secretary-General referred to in paragraph 6, the Geneva discussions and developments on the ground.”

The Security Council drew attention to its previous resolutions pertaining to the conflict in Georgia, including resolution 1808 (2008), which reaffirmed “the commitment of all Member States to the sovereignty, independence and territorial integrity of Georgia within its internationally recognized borders,” and resolution 1839 (2008), extending the mandate of resolution 1808.

The Council also called on Russia and Georgia to respect “the provisions that were

set out in paragraph 2 (a) of the Agreement on a Ceasefire and Separation of Forces signed in Moscow on 14 May 1994 (S/1994/583) ..., pending consultations and agreement on a revised security regime, taking note of the recommendations on the security regime contained in the report of the Secretary-General of 4 February 2009.” Finally, the resolution urged the parties “to refrain from the use of force or from any act of ethnic discrimination against persons, groups of persons or institutions, and to ensure, without distinction, the security of persons, the right of persons to freedom of movement and the protection of the property of refugees and displaced persons.”

Agreement of Goodwill and Confidence-Building for the Settlement of the Problem in Darfur (Feb. 17, 2009)

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

The Sudanese government and the representatives of the Justice and Equality Movement, a Darfur rebel faction, have signed the Agreement of Goodwill and Confidence-Building for the Settlement of the Problem in Darfur, a first step toward future negotiations. Several countries have welcomed the signing of the agreement; however, many experts remain pessimistic about any actual improvement in the ongoing conflict or the likelihood of peace.

The Agreement provides that the parties will provide for a “[h]alt of all forms of harassments against displaced persons” and “[g]uarantee of the free follow of humanitarian relief aid for the needy without any Restraint.” Furthermore, the parties have committed themselves to exchange prisoners of war “in order to build confidence and accelerate the peace process.” Finally, the parties have also agreed to “work for concluding a framework agreement that would result in an agreement for the halt of hostilities and set bases for talks on the detailed issues.”

Judicial and Similar Proceedings

Prosecutor v. Karadzic – Decision on Prosecution Motion to Amend the First Amended Indictment (I.C.T.Y. Feb. 16, 2009)

[Click here](#) for document (approximately 17 pages)

On February 16, 2009 the Trial Chamber III partially granted the Prosecution’s motion to amend the indictment against Radovan Karadzic. The amended indictment charges Karadzic with two counts of genocide instead of one (the first count refers to the crimes committed in Bosnia and Herzegovina during 1992 and the second to the July 1995 massacre in Srebrenica). In addition, two other counts, charges of complicity in genocide and grave breaches of the Geneva Conventions, have been removed from the initial indictment. Finally, the amended indictment reduces the number of municipalities where Karadzic allegedly committed crimes from 41 to 27. However, according to the Chamber, the Prosecution failed to meet the prima facie standard with respect to proposed amended Counts 3, 4, 5 and 6. As a result, the Chamber denied the Prosecution leave to amend that portion of the Indictment.

Karadzic argued that the proposed amendments would create a situation he likened to the trial against Slobodan Milosevic, where the “participants in the Milosevic trial from all corners have recognized the dangers and unfairness of proceeding to trial on an amorphous indictment.” However, the Chamber disagreed, holding that the amendments “will not prejudice the Accused,” rather “the reduction in the number of municipalities will, in fact, serve to reduce the work the Accused will undertake in order to prepare an effective defence against all charges and allegations included in the indictment.”

As we have reported before, Karadzic was the President of the self-proclaimed Republika Srpska and head of the Serbian Democratic Party and Supreme Commander of the Bosnian Serb Army. He is charged with genocide and a number

of war crimes against Bosnian Muslim, Bosnian Croat and other non-Serb civilians in Bosnia and Herzegovina, committed during the three- year conflict that took place on the territory of the former Yugoslavia.

The Prosecution was ordered to file a second amended indictment by Wednesday, 18 February 2009.

Seagon v. Deko Marty Belgium NV (E.C.J. Feb. 12, 2009)

[Click here](#) for document (approximately 5 pages)

On February 12, 2009 the European Court of Justice (ECJ) issued a ruling on the contentious topic of international jurisdiction for claims “which are delivered directly on the basis of the insolvency proceedings and are closely connected with such proceedings.” This is a conflicts of law case wherein the Court had to determine the scope of international jurisdiction with respect to bankruptcy claims.

Currently, Recital 6 of Regulation (EC) Nr. 1346/2000 on insolvency proceedings states that judgments delivered in these types of claims should be recognized according to Articles 31 to 51 of the Brussels I Convention (now Articles 32 to 52 of the Brussels I Regulation). However, that same Regulation fails to define the scope of the rule on international jurisdiction for bankruptcy claims, also known as the rule on *vis attractiva concursus* (providing that all pending litigation is within the exclusive authority of the insolvency court). Some have argued that the silence in the Regulation was an implied concession that national rules would apply. However, this interpretation led to complex results, because all judgments, no matter by which court, received the same kind of recognition. Furthermore, in some cases where the national jurisdiction rules were applied, the varied interpretation of the *vis attractiva concursus* rule led to conflicting results.

A similar type of conflict emerged in the case at hand. According to the facts, a German company transferred 50,000 Euros to a Belgian company and the next day filed for bankruptcy. The trustee in bankruptcy brought an action to set the transaction aside, first appearing before a Belgian court, which applying the *vis attractiva concursus* principle referred the matter to Germany. However, according to German law, this type of action is adjudicated in the courts wherein the defendant is domiciled, in this case Belgium. In order to clear up this conflict, the German Bundesgerichtshof referred the case for preliminary ruling to the ECJ, posing these two questions:

“(1) Do the courts of the Member State within the territory of which insolvency proceedings regarding the debtor’s assets have been opened have international jurisdiction under Regulation [No 1346/2000] in respect of an action in the context of the insolvency to set a transaction aside that is brought against a person whose registered office is in another Member State?

(2) If the first question is to be answered in the negative:

Does an action in the context of the insolvency to set a transaction aside fall within Article 1(2)(b) of Regulation [No 44/2001]?”

The ECJ held that “Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that the courts of the Member State within the territory of which insolvency proceedings have been opened have jurisdiction to decide an action to set a transaction aside by virtue of insolvency that is brought against a person whose registered office is in another Member State.”

Allianz SpA et al. v. West Tankers Inc. (E.C.J. Feb. 10, 2009)

[Click here](#) for document (approximately 5 pages)

The European Court of Justice ruled that it was incompatible with Regulation

44/2001 for an EC member state court to restrain an individual from commencing or continuing proceedings before the courts of another member state "on the ground that those proceedings would be contrary to an arbitration agreement."

According to the facts, a vessel owned by West Tankers and chartered by Erg Petroli SpA (Erg) collided in Syracuse, Italy, with a jetty owned by Erg, causing damage. The agreement between the parties stipulated that disputes between them were to be settled by arbitration in London. Erg approached its insurers (Allianz and Generali) for compensation up to the amount covered and simultaneously commenced arbitration proceedings in London against West Tankers for the balance of the money allegedly due. West Tankers denied any liability for the damage caused by the collision.

After paying Erg its insurance claim, Allianz and Generali commenced subrogation proceedings against West Tankers before the Tribunale di Siracusa, Italy, to recover the money paid to Erg. West Tankers objected, claiming that the court lacked jurisdiction to hear the case due to the existent arbitration agreement between the parties. In addition, West Tankers brought parallel proceedings before the High Court of Justice of England and Wales seeking a declaration that the dispute between itself and the insurer had to be settled through arbitration, and also asking that the court issue an injunction forbidding the insurer from commencing any other proceedings outside the arbitration agreement. The court sided with West Tankers and granted the anti-suit injunction sought against Allianz and Generali. The House of Lords upheld this ruling, holding that while generally Regulation No 44/2001 forbade these types of injunction, this principle did not apply to arbitration proceedings, which were completely excluded from the scope of Regulation No 44/2001 by virtue of Article 1 (2)(d).

The Court disagreed and ruled that an anti-suit injunction such as the one in question was not compatible with the Regulation. The Court reasoned that the result "of the anti-suit injunction was to prevent the courts of another member state from exercising any jurisdiction conferred on them by the Regulation." Therefore, the Court concluded, "[i]f proceedings concerning a right asserted by a party, such as a claim to damages, came within the scope of Regulation 44/2001, a preliminary issue on the applicability of an arbitration agreement also came within its scope. It was exclusively for the Tribunale di Siracusa, which was seised of the case, to rule both on its own jurisdiction under art 5(3) of the Regulation and on the claimant's challenge to that jurisdiction based on art 1(2)(d)." Finally, the Court added that "[w]ith a few exceptions not material in the present case, the Regulation did not permit the courts of one member state to review the jurisdiction of those of another."

Kozacioglu v. Turkey (Eu. Ct. H.R. Feb. 19, 2009)

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

The European Court of Human Rights (ECHR) held in *Kozacioglu* that Turkey had violated Article 1 of Protocol No. 1 to the European Convention on Human Rights (right to property) when it failed to account for the historical value of an expropriated building in its compensation award. Referring to Article 41 of the Convention (just satisfaction), the ECHR concluded that the finding of a violation constituted sufficient just satisfaction of the applicant's non-pecuniary damages. The ECHR awarded him 75,000 Euros for pecuniary damage and 1,000 Euros for costs and expenses.

According to the facts, the Turkish government expropriated in 2000 a building belonging to the applicant, claiming that the property was classified as a "cultural asset." The government paid the applicant approximately 65,326 Euros for the property. Shortly thereafter, the applicant lodged an application asking for an increase in the payment and demanding that a panel of experts reassess the value of the property, taking into account its historical value. According to the applicant, 1,728,750 Euros were owed to him.

The applicant was initially successful in domestic proceedings; however the Court of Cassation reversed a lower court's decision to increase the compensation amount by 139,728 Euros, holding that under the Cultural and Natural Heritage Protection Act

“neither a building's architectural or historical features nor those resulting from its rarity could enter into play in the assessment of its value.” The Court of Cassation did however award the applicant a sum of approximately 45,980 Euros in additional compensation, which the applicant felt was still below the actual value of the property.

Judge Maruste of the ECHR dissented, arguing that the ECHR should not interfere with a state's compensatory procedures: “Even if the law appears highly restrictive at first sight, excluding a building's architectural and historical features and its rarity from the assessment of its value, it is still for the State to decide how it handles this problem and compensates interested parties. The Court's well-established position is that it is not its task to assess the relevant legislation of Contracting Parties.”

A. and Others v. U.K. (Eu. Ct. H.R. Feb. 19, 2009)

[Click here](#) for document (approximately 96 pages)

The European Court of Human Rights held in the case of *A. and Others v. the United Kingdom* that the U.K. had violated Article 5 § 1 (right to liberty and security), Articles 5 § 4 (right to have lawfulness of detention decided by a court), and Article 5 § 5 with respect to some of the applicants when it detained them in high security conditions pursuant to legislation that allowed for the indefinite detention of non-nationals who were certified by the Secretary of State as terrorist suspects. The Court did not find a violation of Article 3 (prohibition of torture and inhuman or degrading treatment) taken alone or in conjunction with Article 13 (right to an effective remedy) of the European Convention on Human Rights (ECHR or Convention).

The facts are as follows: In the aftermath of September 11, the 11 applicants (six of Algerian nationality; four of French, Jordanian, Moroccan and Tunisian nationality; and, one, born in a Palestinian refugee camp in Jordan, stateless) were detained by the British government on the grounds that they posed a serious threat to national security and “were providing a support network for Islamist terrorist operations linked to al'Qaeda.” The applicants argued that the special legislation, which was enacted to implement the new detention methods, was in violation of the Convention and discriminatory since it only applied to non-nationals.

Pursuant to the legislation in question, 16 individuals, including the 11 applicants, were certified as terrorist suspects and detained. Each applicant's certification was subject to review every six months before the Special Immigration Appeals Commission (SIAC). All the applicants lodged appeals against the Secretary of State's decision to certify them as terrorist suspects. On July 30, 2002 SIAC upheld the Secretary of State's decision to certify each of the applicants. However, the SIAC also found that since the detention regime applied only to foreign nationals, it was discriminatory and in breach of the Convention. In addition to the certification appeal, the applicants also challenged the fundamental legality of the Convention derogation. The case reached the House of Lords, which granted leave to appeal the SIAC's certification, because, a “person challenging certification had only limited access to the material advanced against him in the proceedings before SIAC, [and as a result] he could not be expected to do more than raise a plausible reason that material might have been so obtained.” Consequently, the House of Lords remitted each case to SIAC for reconsideration. However, “[o]f the sixteen individuals, including the eleven applicants, detained under Part 4 of the 2001 Act, one had his certificate cancelled by SIAC.” As a result the applicants appealed to the ECHR.

While the European Court of Human Rights acknowledged that the applicants were detained for a long time, a violation generally warranting a high award, the situation here was different requiring a lower amount of compensation. The Court held that “[t]he detention scheme...was devised in good faith, as an attempt to reconcile the need to prevent the commission of acts of terrorism with the obligation under Article 3 of the Convention not to remove or deport any person to a country where he could face a real risk of ill-treatment.” Therefore, the applicants' award was substantially smaller than that awarded to similarly situated individuals.

Decision on the Application to Have Names Removed from the Consolidated

List of the United Nations Sanctions Committee (Human Rights Committee, Oct. 29, 2008)

[Click here](#) for document (approximately 38 pages)

In an October 29, 2008 decision, the Human Rights Committee, pursuant to article 5, paragraph 4 of the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), held that Belgium had violated articles 12 and 17 of the ICCPR by restricting the applicants' right to travel and by unlawfully attacking their "honour and reputation" when it assisted the Security Council in placing their names on the Consolidated List of the United Nations Sanctions Committee. As a result, the Committee ordered that Belgium provide a remedy to the applicants and also "ensure that similar violations do not occur in the future."

The Human Rights Committee, a body of independent experts, is mandated with monitoring the implementation of the International Covenant on Civil and Political Rights (ICCPR) by its state parties (Article 28). Article 41 of the Covenant authorizes the Committee to consider inter-state complaints and the First Optional Protocol to the Covenant allows the Committee to examine individual complaints alleging violations of the Covenant by states parties to the Protocol.

The applicants are Belgian nationals who claimed that their rights under article 2, paragraph 3, article 14, paragraphs 1, 2 and 3, and articles 12, 15, 17, 18, 22, 26 and 27 of the ICCPR were violated when Belgian authorities informed the United Nations Sanctions Committee pursuant to Security Council Resolution 1390 (2002) that the applicants' names should be placed on the list of individuals and entities whose assets should be frozen due to alleged support of terrorism. The applicants unsuccessfully attempted to challenge the listing in Belgian courts. Finally, they appealed to the Human Rights Committee seeking that their Covenant rights be vindicated.

Belgium argued that "Article 1 of the Optional Protocol preclude[d] the [applicants] from disputing measures taken by the State party to implement its Charter obligations." The Committee rejected this claim, holding that it "was competent to admit a communication alleging that a State party had violated rights set forth in the Covenant, regardless of the source of the obligations implemented by the State party. The Committee concluded that the provisions of article 1 of the Optional Protocol did not preclude the consideration of the communication." Furthermore, the Committee found that its competence to adjudicate the claim in no way "impair[ed] the provision of the Charter of the United Nations," rather it dealt with the compatibility of the national measures imposed by Belgium in enforcing the Security Council resolution.

Briefly Noted**Japan and Swiss Confederation Agreement on Free Trade and Economic Partnership (Feb. 17, 2009)**

[Click here](#) for press release (approximately 1 page)

On February 7, 2009 the government of Japan and the Swiss Confederation signed the Agreement on Free Trade and Economic Partnership. According to the press release by the Ministry of Foreign Affairs of Japan, the Agreement "is expected...to promote the liberalization and facilitation of trade and investment between the two countries and will further vitalize both economies by strengthening reciprocal economic ties in wide-ranging fields."

Russia/Ukraine 10-Year Gas Supply Deal (Jan. 19, 2009)

[Click here](#) for press release (approximately 2 pages)

According to Reuters, Russia and Ukraine signed a 10-year gas supply deal on January 19, 2009, thus “clear[ing] the way for a prompt resumption of supplies to a freezing Europe, cut off for nearly two weeks by a dispute between the ex-Soviet states.”

Reuters reports that “Ukraine will buy Russian gas at a 20 percent discount to European market prices in 2009, while Kiev agreed to retain preferential transit fees for Russia this year before both sides switch to a market-based price formula from 2010.”

Extraordinary Chambers in the Courts of Cambodia Opens Trial Against Khmer Rouge Official for Cambodian Atrocities (Feb. 12, 2009)

[Click here](#) for press release (approximately 1 page)

The United Nations News Center reported that the first trial of a Khmer Rouge official commenced on February 12, 2009 at the Extraordinary Chambers in the Courts of Cambodia, a United Nations sponsored tribunal. As we previously reported, Kaing Guek Eav (“Duch”) is charged with crimes against humanity, grave breaches of the Geneva Conventions, and several offences of homicide and torture under Cambodian criminal law. Duch was indicted by the ECCC for alleged offences committed while he was chief of the notorious S-21 camp, “where numerous Cambodians were unlawfully detained, subjected to inhumane conditions and forced labour, tortured and executed in the late 1970s.”

Judge Hisashi Owada (Japan) Elected President of the International Court of Justice; Judge Peter Tomka (Slovakia) elected Vice-President (I.C.J. Feb. 6, 2009)

[Click here](#) for press release (approximately 6 pages)

According to the International Court of Justice press release, on February 6, 2009 Judge Hisashi Owada (Japan) was elected President of the Court by his peers and Judge Peter Tomka (Slovakia) was elected Vice-President, each for a term of three years.

The ICJ is the principal judicial organ of the United Nations and is mandated to adjudicate disputes between States and issue advisory opinions to United Nations organs and agencies.

United States Joins Four Law of War Treaties (U.S. Dept. of State, Jan. 23, 2009)

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

According to the U.S. Department of State media note, “the United States deposited its instruments of ratification for Protocols III, IV, and V of the Convention on Conventional Weapons (“CCW”) and for an amendment to that Convention. Protocol III covers incendiary weapons, Protocol IV covers blinding laser weapons, and Protocol V deals with explosive remnants of war.” The media note explains that the “CCW and its Protocols are part of a legal regime that regulates the use of particular types of conventional weapons that may be deemed to pose special risks of having indiscriminate effects or causing unnecessary suffering.”

****Educational copying is permitted with due acknowledgment***

**International Law In Brief (ILIB) - Copyright 2008
The American Society of International Law**

Author: Djurdja Lazic

To receive other ASIL publications, join ASIL at www.asil.org

*ILIB is a free-of-charge electronic resource. To sign up for ILIB click
[here](#).*

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