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DOI:10.1017/ilm.2022.37

BRIEFLY NOTED

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Judicial and Similar Proceedings

1. Int'l Olympic Comm. et al. v. Russian Anti-Doping Agency et al. (Court of Arbitration for Sport – February 14, 2022)

<https://www.tas-cas.org/fileadmin/user_upload/OG_22_08-09-10_Arbitral_Award__publication_.pdf>

On February 14, 2022, an ad hoc division of the Court of Arbitration for Sport (CAS) issued its decision in the case involving Russian figure skater Kamila Valieva. Valieva was suspended from participation in the 2022 Winter Olympic Games after the detection of a banned substance in her blood. The suspension was lifted by a decision issued by the Russian Anti-Doping Agency (RUSADA) Disciplinary Anti-Doping Committee on February 9, 2022, allowing her to continue in the Olympics. The applicants (the International Olympic Committee, the World Anti-Doping Agency, and the International Skating Union) challenged the lifting of the suspension. The CAS denied the applicants' challenge and allowed Valieva to participate in the Games. The CAS held that because Valieva is under the age of 16, she is considered a "protected person" under the World Anti-Doping Code and as such, should be sanctioned to a lesser degree than someone of age. In addition, because the positive sample was taken before the Winter Olympics, and she had not tested positive during the Games themselves, preventing her from participating in the Winter Games would cause "irreparable harm." In addition, the 44-day delay in reporting her adverse test results should not be held against her to her detriment, particularly in consideration of the fact that the substance detected in the sample was "extremely low" and its performance-enhancing effects have not been proven. The World Anti-Doping Agency expressed its disappointment in the decision, noting that the World Anti-Doping Code does not permit "specific exceptions to be made in relation to mandatory provisional suspensions for 'protected persons.'"

2. Ukraine Institutes Proceedings against Russia (International Court of Justice – February 26, 2022)

<https://www.icj-cij.org/public/files/case-related/182/182-20220227-PRE-01-00-EN.pdf>

On February 26, 2022, the International Court of Justice announced that Ukraine has instituted proceedings against the Russian Federation "relating to the interpretation, application and fulfilment of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide." In the main, Ukraine argues that Russia has falsely alleged that Ukraine has committed genocidal acts in the Luhansk and Donetsk oblasts of Ukraine which has served as the basis for Russia's "special military operation" against Ukraine. Ukraine denies these allegations and accuses Russia of "planning acts of genocide in Ukraine" and that Russia "is intentionally killing and inflicting serious injury on members of the Ukrainian nationality" in contravention of Article II of the Genocide Convention. Ukraine has requested the Court to indicate provisional measures "in order to prevent irreparable prejudice to the rights of Ukraine and its people and to avoid aggravating or extending the dispute between the parties under the Genocide Convention." Read the full press release here.

3. Prosecutor Opens Investigation into the Situation in Ukraine (International Criminal Court – February 28, 2022)

<https://www.icc-cpi.int/Pages/item.aspx?name=20220228-prosecutor-statement-ukraine>

On February 28, 2022, ICC Prosecutor, Karim A.A. Khan QC, announced his decision to investigate the situation in Ukraine. Mr. Khan notes that, though Ukraine is not a party to the Rome Statute, "it has twice exercised its prerogatives to legally accept the Court's jurisdiction over alleged crimes under the Rome Statute occurring on its territory, should the Court choose to exercise it." He stated that he has reviewed his Office's preliminary conclusions on the matter and has concluded "that there is a reasonable basis to believe that both alleged war crimes and crimes against humanity have been committed in Ukraine in relation to the events already assessed during the preliminary examination by the Office. He further stated that the investigation will include "any new alleged crimes falling within the jurisdiction of [his] Office that are

https://doi.org/10.1017/ilm.2022.37 Published online by Cambridge University Press

committed by any party to the conflict on any part of the territory of Ukraine." The Office will now seek permission from the Pre-Trial Chamber to open an investigation.

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Resolution 2623(2022) (United Nations Security Council – February 27, 2022)

<https://undocs.org/S/RES/2623(2022)>

On February 27, 2022, the Security Council held an emergency special session of the General Assembly on the Ukraine Crisis, adopting Resolution 2623 (2022) by 11 Votes in Favor, 1 Against, and 3 Abstentions. Specifically, the special session was held to answer the question of "whether to use armed force, when necessary, to maintain or restore international peace and security." Russia was the only state to vote against the resolution. According to a UN press release, in speaking on Russia's decision to veto the Resolution "[t]he speaker for the United States said the Russian Federation may have vetoed Friday's resolution, but Moscow cannot veto the Ukrainian people and cannot veto the United Nations Charter." Several others gave statements including representatives from Russia, Albania, Ireland, United Kingdom, India, Gabon, United Arab Emirates, and Ghana. This was the first special session of its kind in years, as "[t]he Security Council had last called for convening an emergency special session of the General Assembly in 1982."

2. U.S. Signs Hague Judgments Convention (March 2, 2022)

<https://www.hcch.net/en/news-archive/details/?varevent=850>

On March 2, 2022, the United States became the sixth signatory to the 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, following Costa Rica, Israel, the Russian Federation, Ukraine, and Uruguay. The Convention was signed on behalf of the U.S. by Ms. Jennifer DeWitt Walsh, Acting Deputy Chief of Mission. The Convention aims to "facilitate[. . .] the effective international circulation of judgments in civil or commercial matters" through a set of harmonized conditions for recognition and enforcement. The Convention will enter into force after it is ratified by two states. None of the six signatories have ratified the Convention.

3. War Crimes by Russia's Forces in Ukraine (U.S. Department of State – March 23, 2022)

<https://www.state.gov/war-crimes-by-russias-forces-in-ukraine/>

On March 23, 2022, U.S. Secretary of State Antony J. Blinken, issued a statement determining that "members of Russia's forces have committed war crimes in Ukraine." The statement recounts the destruction by Russian forces of "apartment buildings, schools, hospitals, critical infrastructure, civilian vehicles, shopping centers, and ambulances" and notes that the United Nations "has officially confirmed more than 2,500 civilian casualties, including dead and wounded." This conclusion was reached "based on a careful review of available information from public intelligence sources." Blinken states that "[t]he U.S. government will continue to track reports of war crimes and will share information [it gathers] with allies, partners, and international institutions and organizations" and that the U.S. is "committed to pursuing accountability using every tool available, including criminal prosecutions." This statement comes days after Blinken's announcement that Myanmar military action amounts to genocide.

4. United Kingdom Removes Judges from Hong Kong Court of Final Appeal (U.K. Foreign Secretary – March 30, 2022)

<https://www.gov.uk/government/news/foreign-secretary-supports-the-withdrawal-of-serving-uk-judges-from-the-hong-kong-court-of-final-appeal>

On March 30, 2022, Britain's Foreign Secretary, Liz Truss, announced Britain's withdrawal of its judges from Hong Kong's top court. According to the announcement, the decision came as a result of the fact that "since the imposition of the National Security Law in 2020, China has continued to use this legislation to undermine the fundamental rights and freedoms of the people of Hong Kong." Noting that "China's actions include restrictions on freedom of expression, the stifling of opposition voices, and the criminalising of dissent," the Foreign Secretary said, "the situation has reached a tipping point where it is no longer tenable for

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British judges to sit on Hong Kong's leading court, and would risk legitimising oppression." The statement "wholeheartedly support[ed] the decision to withdraw British judges from the court."

5. India-Australia Economic Cooperation and Trade Agreement (April 2, 2022)

<https://www.dfat.gov.au/trade/agreements/negotiations/aifta/australia-india-comprehensive-economic-cooperation-agreement>

On April 2, 2022, India and Australia signed "The India-Australia Economic Cooperation and Trade Agreement" (IndAus ECTA) which eliminated tariffs on over 85 percent of Australian good exports to India. The Indian and Australian Ministers also expressed their views on the growing strength of the relationship between the two countries before signing of the agreement. Calling it a "watershed moment for our bilateral relations . . . the Prime Minister said that signing of IndAus ECTA in such a short span of time reflect[ed] the depth of the mutual confidence between the two countries."

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