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BRIEFLY NOTED
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Judicial and Similar Proceedings

1. Kenya National Commission on Human Rights v. Attorney General (High Court of Kenya – February 9, 2017)

<http://www.knchr.org/Portals/0/CourtRulings/COURT%20JUDGEMENT%20ON%20KNCHR%20PETITION%20NO-227.pdf?ver=2017-02-09-144240-663>

On February 9, 2017, the High Court of Kenya ruled against the attempted closure of Dadaab, the world's largest refugee camp. The Court determined that the closure would be "tantamount to an act of group persecution." The government argued that the camp had lost its humanitarian nature and was used to plan and attack by the Somalia-based al-Shabab terrorist group. Dadaab was established in 1991 for refugee fleeing conflict in Somalia.

2. Closing Order in Case 004/01 (Extraordinary Chambers in the Courts of Cambodia – February 22, 2017)

<https://www.eccc.gov.kh/en/case/topic/1662>

On February 22, 2017, the Co-Investigating Judges at the Extraordinary Chambers in the Courts of Cambodia issued a joint closing order in Case 004/01 dismissing the proceedings against Im Chaem for alleged crimes committed during the Cambodian genocide between 1975 and 1979. The case was dismissed "because according to their evaluation of the evidence collected during the investigation, Im Chaem is not subject to the ECCC's personal jurisdiction, which means she was neither a senior leader nor otherwise one of the most responsible officials of the Khmer Rouge regime." Due to concerns about timing and logistics, "the Co-Investigating Judges decided to issue the dispositive part of the closing order now, together with a summary of the reasons, with a separate document containing the full reasons to be filed in due course."

3. Life Technologies Corp. v. Promega Corp. (U.S. Supreme Court – February 22, 2017)

<https://www.supremecourt.gov/opinions/16pdf/14-1538_p8k0.pdf>

On February 22, 2017, the U.S. Supreme Court ruled in *Life Technologies Corp. v. Promega Corp.*that supplying one component of a patented multicomponent invention produced outside the United States does not infringe that patent. The Court noted that a supplier may be liable for copyright infringement for supplying "all or a substantial portion of the components of the invention," and held that the term "substantial" was to be viewed as a quantitative assessment and must be more than one part. The case relates to a DNA genetic testing toolkit patented by Promega, who sued the exclusive licensee Life Tech after they began selling the toolkits for unlicensed purposes. Life Tech produced one component out of five required parts in the United States before shipping it to its facility in the United Kingdom for production with the other four parts. Promega sued for patent infringement, claiming that the component produced in the United States was a substantial portion of the toolkit and arguing that the term "substantial portion" should be reviewed with both quantitative and qualitative measurements. The Court disagreed and held that "the statutory context points to a quantitative meaning."

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4. Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union (World Trade Organization – February 23, 2017)

<https://www.wto.org/english/tratop_e/dispu_e/475abr_e.pdf>

On February 23, 2017, the World Trade Organization (WTO) Appellate Body issued its report in "Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union," upholding a previous ruling that found Russia had illegally embargoed European live pigs, pork, and other pig products in violation of international trade laws. Russia imposed the ban in January 2014 in response to the outbreak of African Swine Fever in the EU and argued that it was in line with the Sanitary and Phytosanitary Agreement and the non-discrimination provisions of the 1994 General Agreement on Tariffs and Trade. The Appellate Body disagreed and found that the ban went beyond what was necessary to protect health and that "the European Union had provided the necessary evidence to objectively demonstrate to Russia, pursuant to Article 6.3 of the SPS Agreement, that there were areas within the European Union, outside of Estonia, Latvia, Lithuania, and Poland, which were free of ASF and were likely to remain so." The Appellate Body recommended that the Dispute Settlement Body request that Russia bring its regulations into conformity with its international obligations.

5. JingAo Solar Co. Ltd v. Council of the European Union (European Court of Human Rights – February 28, 2017)

< http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62014TJ0158>

On February 28, 2017, the General Court of the Court of Justice of the European Union ruled in *JingAo Solar Co. Ltd v. Council of the European Union* to uphold a set of duties that the European Council imposed on solar panel imports from China. According to the press release, the duties stemmed from a European Commission investigation in 2012 and 2013—which revealed that companies were selling the panels well below normal market value—and were imposed to mitigate damage from the unfair commercial practice to the EU industry. The Court found that lawmakers didn't err in assigning duties to the twenty-six companies that had sued and that they had properly included solar panels made in other states but consigned to Chinese companies to be Chinese products since the origin of export was China. The Court also rejected "the argument that the rates of duties determined by the Council are excessive compared with what is necessary to remedy the injury caused to the EU industry by the dumped imports" and found that the Council accurately distinguished other potential causes of injury from the dumped imports.

6. A, B, C, D v. van Buitenlandse Zaken (Court of Justice of the European Union – March 14, 2017)

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=188850&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=367853>

On March 14, 2017, the Grand Chamber of the Court of Justice of the European Union ruled in *A, B, C, D v. van Buitenlandse Zaken*that acts of armed forces during armed conflict governed by international humanitarian law may be considered terrorist acts for purposes of EU law. The case arose after Dutch authorities froze the assets of four individuals due to their ties to the Liberation Tigers of Tamil Eelam (LTTE)—which the Netherlands had concluded was a terrorist organization—while implementing Resolution 1373 of the UN Security Council aimed at preventing the financing of terrorist acts. A and the others argued that the LTTE did not commit terrorist acts because the LTTE was "a non-State armed force engaged in a non-international armed conflict in Sri Lanka" whose "activities were governed only by international humanitarian law and not by the EU and international rules." The Court held "that customary international law does not prevent

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actions by armed forces during periods of armed conflict from constituting 'terrorist acts'" and emphasized "that international humanitarian law pursues different aims from EU law."

7. Eli Lily v. Canada (International Centre for Settlement of Investment Disputes – March 16, 2017)

<https://www.italaw.com/sites/default/files/case-documents/italaw8546.pdf>

On March 16, 2017, an International Centre for Settlement of Investment Disputes (ICSID) Tribunal issued an award in *Eli Lilly v. Canada* that dismissed Eli Lilly's claim against Canada over the alleged wrongful termination of its patents under the North Atlantic Free Trade Agreement (NAFTA). Lilly's suit revolved around the "promise utility doctrine" in Canadian law, which provides that patent owners must be able to demonstrate or adequately predict that a patent actually has the utility the patent application promised by the patent's filing date. Lilly argued that this doctrine is "radically new, arbitrary and discriminatory against pharmaceutical companies and products" and that Lilly had "legitimate expectations that its Zyprexa and Strattera patents would not be invalidated on the basis of a radically new utility requirement." The Tribunal rejected Lilly's claims and found that the promise utility doctrine was not a fundamental or dramatic change, but had gradually evolved over a number of years through incremental change, and that Lilly did not demonstrate "that its legitimate expectations were violated by the application of Canadian patent law to the Zyprexa and Strattera Patents." The Court further noted "that a NAFTA Chapter Eleven tribunal is not an appellate tier in respect of the decisions of the national judiciary" and it will "only be in very exceptional circumstances, in which there is clear evidence of egregious and shocking conduct, that it will be appropriate for a NAFTA Chapter Eleven tribunal to assess such conduct against the obligations of the respondent State under NAFTA."

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Trade Facilitation Agreement (World Trade Organization – February 22, 2017)

<http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2339(2017)>

On February 22, 2017, the World Trade Organization (WTO) Trade Facilitation Agreement (TFA) entered into force after achieving the required acceptance from two-thirds of the WTO's 164 members for the agreement to take effect. The TFA "contains provisions for expediting the movement, release and clearance of goods, including goods in transit. It also sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. It further contains provisions for technical assistance and capacity building in this area." The WTO also stated that a "Trade Facilitation Agreement Facility (TFAF) has been created to help ensure developing and least-developed countries obtain the assistance needed to reap the full benefits of the TFA."

2. Resolution 2347 (United Nations Security Council – March 24, 2017)

<https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2347(2017)>

On March 24, 2017, the Security Council adopted a resolution condemning the unlawful destruction of cultural heritage, religious sites and artefacts, and the smuggling of cultural property by terrorist groups during armed conflict. The Council noted that such acts can "exacerbate conflict and hamper post-conflict national reconciliation, thereby undermining the security, stability, governance, social, economic and cultural development of affected States." The Council also affirmed that unlawful attacks against sites of cultural heritage "may constitute, under certain circumstances and pursuant to international law a war crime and that perpetrators of such attacks must be brought to justice." The Council further encouraged states to take steps to stop the illicit trade and trafficking in cultural property and "to request and provide cooperation in investigations,

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prosecutions, seizure and confiscation as well as the return, restitution or repatriation of trafficked, illicitly exported or imported, stolen, looted, illicitly excavated or illicitly traded cultural property."

3. Resolution 2348 (United Nations Security Council – March 31, 2017)

< https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2348(2017) >

On March 31, 2017, acting under Chapter VII of the United Nations Charter, the Security Council adopted a resolution renewing the mandate of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) until March 31, 2018. The Council called on all stakeholders in the Democratic Republic of the Congo (DRC), "including President Kabila, the presidential majority and the opposition, to swiftly implement the 31 December 2016 agreement" and requested that the government "ensure a transparent and credible electoral process, in fulfilment of their primary responsibility to create propitious conditions for the forthcoming elections." The Council also urged the government "to hold accountable those responsible for violations of international humanitarian law or violations and abuses of human rights, as applicable, in particular those that may amount to war crimes and crimes against humanity, including those committed in the context of the electoral process." The Council condemned the actions of all armed groups operating in the DRC and demanded that such groups cease their actions, permanently disband, lay down their arms, and release child soldiers.

4. Resolution 2350 (United Nations Security Council – April 13, 2017)

< http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2350(2017)>

On April 13, 2017, the UN Security Council passed Resolution 2350, ending peacekeeping operations in Haiti that had been ongoing for thirteen years. The Security Council recognized the "major milestone towards stabilization achieved with the peaceful completion of the electoral process and return to constitutional order on 7 February 2017, and commend[ed] Haitian authorities, in particular the Haitian Provisional Electoral Council and the Haitian National Police (HNP), for their efforts towards ensuring elections were conducted in a credible and inclusive manner and held in a largely peaceful environment." Acting under Chapter VII of the UN Charter, the Security Council extended the mandate of the United Nations Stabilization Mission in Haiti (MINUSTAH) for a final six months with an end date of October 15, 2017, during which time the military component of MINUSTAH will gradually drawdown. The Council also "recognized the ownership and primary responsibility of the Government and people of Haiti over all aspects of their country's development, and encouraged the Mission to provide logistical and technical expertise, within available means and consistent with its mandate."

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