BRIEFLY NOTED
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+Cite as 53 ILM 1236 (2014)+

Judicial and Similar Proceedings

1. Apotex Inc. v. United States of America (ICSID – August 25, 2014)
<http://www.state.gov/documents/organization/233043.pdf>

On August 25, 2014, a Tribunal established under the North American Free Trade Agreement (NAFTA) at the International Centre for Settlement of Investment Disputes (ICSID) dismissed all claims brought by Apotex Holdings Inc. and Apotex Inc. against the United States. The case concerned a prior arbitration from 2012 where Apotex argued that when the U.S. Federal Drug Administration (FDA) implemented an "Import Alert" on two Apotex facilities in Canada, the U.S. violated "obligations under NAFTA Chapter Eleven to accord Apotex and its U.S. investments national and most-favored-nation treatment [and] adopted the Import Alert without due process, in violation of the customary international law minimum standard of treatment." In the present arbitration, the Tribunal determined, by a majority, "that Apotex was barred from relitigating the issue of whether Apotex Inc.'s 'abbreviated new drug applications' constituted 'investments' in the United States for purposes of NAFTA Chapter Eleven, given a previous tribunal's determination of that issue." Additionally, "[o]n the merits, the tribunal unanimously concluded that the Import Alert was a lawful and appropriate exercise of FDA's regulatory authority [and] did not violate the United States' obligations under NAFTA Chapter Eleven."

2. Trabelsi v. Belgium (ECHR – September 4, 2014)
<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-146372>

On September 4, 2014, a Chamber of the European Court of Human Rights (the Court) ruled in *Trabelsi v. Belgium* that Belgium's extradition of a Tunisian national to the U.S., where he is being prosecuted for terrorist offenses and is liable to life imprisonment, entailed a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights (the Convention). The Court found "that the life sentence to which Mr Trabelsi was liable in the United States was irreducible inasmuch as US law provided for no adequate mechanism for reviewing this type of sentence, and that it was therefore contrary to the provisions of Article 3." The Court noted that Belgium had acted in breach of interim measures from 2011 where the Court had "indicated to the Belgian Government that it should not extradite Mr Trabelsi to the United States." The Court also held that Belgium is to pay the applicant €60,000 for non-pecuniary damage and €30,000 for costs and expenses.

3. Sentencia TC/0256/14 (Dominican Constitutional Court – November 4, 2014)
<http://www.tribunalconstitucional.gob.do/sites/default/files/documentos/Sentencia%20TC%200256-14%20%20%20%20C.pdf>

On November 4, 2014, the Dominican Constitutional Court (the Court) ruled unconstitutional the instrument the Dominican Republic deposited with the Organization of American States in 1999 accepting the competence of the Inter-American Court of Human Rights (IACHR). The Court found that "the Senate never issued a resolution to ratify the February 1999 agreement with the rights court as required by the Dominican constitution. Ten judges voted in favor of the ruling, while three judges voted against it." The Court made its ruling "in response to a complaint submitted by a group of nationalists in the mid-2000s arguing the agreement with the rights court was unconstitutional." The IACHR condemned the decision, stating that the decision has no basis in international law and that "[t]he American Convention does not establish the possibility that a State that continues to be a party to the treaty can release itself from the jurisdiction of the Inter-American Court."

4. Elisabeta Dano, Florin Dano v. Jobcenter Leipzig (CJEU – November 11, 2014)
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=159442&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=290307>

On November 11, 2014, the Court of Justice of the European Union (the Court) ruled in *Elisabeta Dano, Florin Dano v. Jobcenter Leipzig* that "economically inactive" citizens of the European Union are not required to

https://doi.org/10.5305/intelegamate.53.6.1236 Published online by Cambridge University Press

receive economic assistance from other Member States under the Directive on Free Movement of EU Citizens (the Directive). According to the Court, Germany is not required to assist Romanian nationals who traveled to Germany and requested economic assistance reserved for those actively seeking employment. The Court stated that the Directive "seeks to prevent economically inactive Union citizens from using the host Member State's welfare system to fund their means of subsistence" and allows "domestic legislation which excludes nationals of other Member States from entitlement to certain 'special non-contributory cash benefits', although they are granted to nationals of the host Member State who are in the same situation."

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Guidelines for Industry on Child Online Protection (UN – September 5, 2014)
<http://www.itu.int/en/cop/Documents/bD_Broch_INDUSTRY0809.pdf>

On September 5, 2014, United Nations agencies and partners of the Child Online Protection Initiative released new guidelines entitled, "Guidelines for Industry on Child Online Protection." The guidelines "are aimed at establishing the foundation for safer and more secure use of internet-based services and associated technologies for today's children and future generations." The guidelines, which were "developed in alignment with the UN Guiding Principles on Business and Human Rights and the Children's Rights and Business Principles," seek to "provide advice on how the information and communications technology (ICT) industry can help promote safety for children using the Internet or any technologies or devices that can connect to it, as well as guidance on how to enable responsible digital citizenship, learning and civic participation."

2. Arms Trade Treaty (UN – September 28, 2014)
<https://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/06/English7.pdf>

On September 28, 2014, eight states ratified the Arms Trade Treaty (ATT), bringing the total number of states parties to 53. According to Article 22 of the ATT, the "Treaty shall enter into force ninety days following the date of the deposit of the fiftieth instrument of ratification, acceptance or approval with the Depositary." The object of the Treaty is to "[e]stablish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms," and to "[p]revent and eradicate the illicit trade in conventional arms and prevent their diversion."

3. General Comment No. 35 – Article 9: Liberty and Security of Person (UNHRC – October 30, 2014)
<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GC/35&Lang=en>

On October 30, 2014, the United Nations Human Rights Committee issued an authoritative commentary in regard to the International Covenant on Civil and Political Rights (ICCPR), entitled, "General Comment No. 35 – Article 9: Liberty and security of person." According to a press release, the General Comment discusses states' obligations relating to Article 9 of the ICCPR and covers a range of issues, "including the definition of arbitrary detention and the procedural safeguards necessary for avoiding unlawful and arbitrary detention, such as the 48-hour standard for promptly bringing a criminal suspect before a judge." It also discusses "the highly controversial issue of people being detained without criminal charge under security legislation in exceptional situations such as armed conflict. It emphasizes that such detention poses a severe risk of a person being arbitrarily deprived of their liberty. The General Comment describes safeguards that must be provided for security detention to be acceptable under Article 9."

4. Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on Harmful Practices (CEDAW and CRC – October 30, 2014)
<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&SymbolNo=CEDAW/C/GC/31/CRC/C/GC/18>

On November 4, 2014, the Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee on the Rights of the Child (CRC) released a General Recommendation/General Comment on

https://doi.org/10.5305/intelegamate.53.6.1236 Published online by Cambridge University Press

states' obligations regarding harmful practices against women and girls. The objective "is to clarify the obligations of States parties to [the Convention on the Elimination of Discrimination against Women] and [the Convention on the Rights of the Child] by providing authoritative guidance on legislative, policy and other appropriate measures that must be taken to ensure full compliance with their obligations under the two Conventions to eliminate harmful practices." The CEDAW and CRC decided to establish this report "by virtue of [their] overlapping mandate and the shared commitment to prevent, respond to and eliminate harmful practices, wherever and in whichever form they occur."

https://doi.org/10.5305/intelegamate.53.6.1236 Published online by Cambridge University Press