Copyright © 2018 by The American Society of International Law
DOI:10.1017/ilm.2018.42

BRIEFLY NOTED

(Not reproduced in *International Legal Materials*)

JUDICIAL AND SIMILAR PROCEEDINGS

1. A. v. ICC (International Labour Organization – June 26, 2018)

<http://arcproject.co.uk/wp-content/uploads/2018/06/ILOAT-judgement.pdf>

On June 26, 2018, the International Labour Organization (ILO) issued a judgment in *A. v. ICC*, stating that the International Criminal Court (ICC) was at fault in the Libyan government's detention of four ICC officials in June 2012 while there on Court business and ordering 340,000 euros in moral damages to two of the individuals. In its determination of damages, the Tribunal considered that the complainant's detention was a direct result of the ICC's failure to prepare for the mission and the damage the individuals suffered while in detention in Libya. The award "addresses the damage to their psychological well-being as well as to their public and private relations – due to the stress, and difficulties in traveling, due to the ongoing charges against them in Libya and the defamation of their characters which would have been mitigated if the ICC had issued a statement asserting their innocence immediately instead of waiting until the Libyan accusations had been widely publicized." Additionally, the ILO noted that the complainant was subject to continued mistreatment by the ICC Registrar after her return from Libya, which "amounts to abuse of power, bad faith and retaliation and warrants an additional award of moral damages which the Tribunal sets in the amount of 60,000 euros."

2. The Prosecutor v. Germain Katanga (International Criminal Court – July 19, 2018)

<https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/04-01/07-3804-Red>

On July 19, 2018, Trial Chamber II of the International Criminal Court dismissed requests for reparations made by applicants in the case of *The Prosecutor v. Germain Katanga* for transgenerational harm, which refers to harm passed from parent to child. The Chamber looked at "the progress of scientific studies on the transgenerational transmission of trauma and, in particular, of two theories – epigenetic transmission, which is biological, and social transmission, which is learned." It went on to review the principle requiring a casual nexus between a criminal act and alleged harm, noting that a causal chain may be interrupted by another event that adds to the harm of the individuals. The Chamber then dismissed the applications "finding that the applicants concerned had not established to the requisite standard of proof the causal nexus between the psychological harm they had personally suffered and the crimes of which Mr Katanga was convicted."

3. Société des produits Nestlé v Mondelez UK Holdings & Services (Court of Justice of the European Union – July 25, 2018)

<http://curia.europa.eu/juris/documents.jsf?num=C-84/17>

On July 25, 2018, the Court of Justice of the European Union (CJEU) ruled that the European Union Intellectual Property Office (EUIPO) must reconsider whether the KitKat shape had acquired a distinctive character within certain EU states in order to be registered as an EU trademark. The case concerns Nestle's application of the "4 Finger KitKat" shape as an EU trademark, which EUIPO agreed to register in 2006. A competitor challenged the trademark at the General Court, which found "that EUIPO had erred in law in finding that the mark at issue had acquired distinctive character through use in the EU, when such acquisition had been proved only for part of the territory of the EU." On appeal, the CJEU agreed and held that although it is not necessary to provide evidence that an item has obtained a distinctive character for each individual EU member state in order to obtain a trademark, "the evidence submitted must be capable of establishing such acquisition throughout the Member States of the EU in which that mark was devoid of inherent distinctive character." The CJEU held that the "General Court was right to annul EUIPO's decision, in which EUIPO

https://doi.org/10.1017/ilm.2018.42 Published online by Cambridge University Press

concluded that distinctive character had been acquired through use of the mark at issue without adjudicating on whether that mark had acquired such distinctive character in Belgium, Ireland, Greece and Portugal."

4. Decisions of the IDF Military Advocate General Regarding Exceptional Incidents that Allegedly Occurred During Operation "Protective Edge" (Israeli Military Advocate General – August 15, 2018)

<https://www.idf.il/media/40288/examination_and_investigation_of_exceptional_incidents_from_operation_protective_edge.pdf>

On August 15, 2018, the Israeli Military Advocate General (MAG) released a report providing an update on their investigation of the Israeli military "Operation Protective Edge," launched in 2014 in the Gaza Strip during the seven-week conflict between Israel and Palestine. The report provides the MAG's findings on fighting in the city of Rafah on August 1, 2014, also known as "Black Friday," during which Hamas militants ambushed three Israeli Defense Forces (IDF) soldiers during a humanitarian ceasefire and Israel responded with attacks that resulted in the death of over 110 Palestinians in one of the deadliest incidents of Operation Protective Edge. The MAG investigated whether the Israeli military response to the ambush was proportional under the international laws of armed conflict and IDF operational directives and "did not find that the actions of the IDF forces that were examined raised grounds for a reasonable suspicion of criminal misconduct." The MAG found that Israeli use of firepower "accorded with Israeli domestic law and international law requirements" and "ordered that the case be closed, without opening a criminal investigation." The report also discusses the MAG's decision to close fifteen other investigations.

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Final Agreement for the Settlement of the Differences as Described in the United Nations Security Council Resolutions 817 (1993) and 845 (1993), the Termination of the Interim Accord of 1995, and the Establishment of a Strategic Partnership Between the Parties (June 17, 2018)

<http://www.pappaspost.com/wp-content/uploads/2018/06/Athens-Skopje-English.pdf>

On June 17, 2018, the prime ministers of Greece and the Former Yugoslav Republic of Macedonia signed an agreement regarding the name of the former Yugoslav Republic, which has been a point of contention and troubled relations for decades. The agreement stipulates that the mutually agreed name will be "Republic of North Macedonia" or "North Macedonia," and that it will be used for all purposes, both domestically and internationally. The agreement stipulates that once the agreement enters into force, the Former Yogoslav Republic of Macedonia will request admission to international organizations under its new name and Greece agrees not to object.

2. U.S. Withdrawal from the UN Human Rights Council (June 19, 2018)

<https://usun.state.gov/remarks/8486>

On June 19, 2018, U.S. Permanent Representative to the UN Nikki Halley announced that the United States was withdrawing from the UN Human Rights Council (HRC). Haley stated that the United States called for reform of the HRC a year ago and "made a good-faith effort to resolve the problems" they saw within the Council, but that progress had not been made since then. In her statement, Haley noted that U.S. complaints include the election of states that are human rights abusers to the Council, the failure to respond to human rights abuses by states on the Council, and the Council's bias against Israel. Haley also stated that should reforms take place, the Unites States would rejoin the Council and that the U.S. "will keep trying to strengthen the entire framework of the UN engagement on human rights issues."

3. Resolution 2427 (UN Security Council – July 9, 2018)

<http://undocs.org/S/RES/2427(2018)>

On July 9, 2018, the UN Security Council passed a resolution to strengthen protections for children in armed conflict. In the resolution, the Security Council condemns all violations of international law regarding

https://doi.org/10.1017/ilm.2018.42 Published online by Cambridge University Press

recruitment of child soldiers to armed conflict, as well as all violence, abductions, and attacks against children in all situations of armed conflict. The Council made note of the importance of the work of the Special Representative on Children and Armed Conflict and called on "all parties to armed conflict to allow and facilitate safe, timely and unhindered humanitarian access to children, respect the exclusively humanitarian nature and impartiality of humanitarian aid and respect the work of all United Nations." The Council and also "stressed the need to pay particular attention to the treatment of children associated or allegedly associated with non-State armed groups, emphasizing that such children, or those accused of committing crimes during conflicts, should be treated primarily as victims." The resolution passed unanimously.

4. Report of Independent International Fact-Finding Mission on Myanmar (UN Human Rights Council – August 27, 2018)

<https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_64.pdf>

On August 27, 2018, the UN Human Rights Council released the Report of Independent International Fact-Finding Mission (Mission) on Myanmar concerning the recent alleged human rights violations by military and security forces in Myanmar, and particularly in Rakhine State. The Mission concluded that the gross human rights violations and abuses committed in Kachin, Rakhine, and Shan States "undoubtedly amount to the gravest crimes under international law" and that "Myanmar has a heavy responsibility to remedy the situation as a matter of the utmost urgency." The Mission argued that "Myanmar's top military generals, including Commander-in-Chief Senior-General Min Aung Hlaing, must be investigated and prosecuted for genocide in the north of Rakhine State, as well as for crimes against humanity and war crimes in Rakhine, Kachin and Shan States." The Report notes that in terms of the legal framework for their analysis, "in addition to non-international armed conflicts in Kachin and Shan States, the Mission considered that the violence in Rakhine State between the Arakan Rohingya Salvation Army (ARSA) and the Myanmar security forces constituted a non-international armed conflict."

https://doi.org/10.1017/ilm.2018.42 Published online by Cambridge University Press