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BRIEFLY NOTED

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Judicial and Similar Proceedings

1. Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2728/2016 (UN Human Rights Commission – January 7, 2020)

<https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/127/D/2728/2016&Lang=en>

In January 2020, the UN Human Rights Committee ruled that states cannot deport people who face "climate change-induced conditions that violate the right to life." According to a UN press release, the complaint in this case was filed by Ioane Teitiota who was denied asylum in New Zealand and deported with his family to his native Kiribati. Following his deportation, he filed a complaint with the Human Rights Committee, alleging that his deportation violated his right to life and that the rise of the sea level and other climate change impacts rendered Kiribati uninhabitable. Though the Committee determined that, on the facts, Mr. Teitiota's right to life was not violated, the Committee specifically indicated that ""this ruling sets forth new standards that could facilitate the success of future climate change-related asylum claims." In particular, the Committee determined that asylum seekers need not demonstrate that they would face imminent harm if returned to their home states because the negative effects of climate change can occur suddenly and more slowly, over the longer-term.

2. Islamic Republic of Iran v. United States (Iran-U.S. Claims Tribunal – March 10, 2020)

<http://www.iusct.net/General%20Documents/Partial%20Award%20No.%20604/A15(II-A)%20doc%202350-T-Award%20(10%20March%202020)%20EN.pdf>

In May 20209, the Iran-United States Claims Tribunal released a partial award dated March 10, 2020, in case A15 (II:A), concerning "the transfer of Iranian properties" from the United States back to Iran as required by the Algiers Declaration. Before evaluating each of the individual claims pertaining to specific pieces of property, the Court decided on the definition of property, when ownership transfers from one party to the other, when the US obligation began, and the extent of both the US and Iranian obligations under the Declaration. It then evaluated each claim individually and decided on reparations on a case-by-case basis. In total, "the Tribunal award[ed] Iran . . . USD 29,115,971.69" and required the US to return several properties "to Iran within four months of the date of . . . [the] Partial Award." The Tribunal president and seven other members issued separate opinions, dissenting on various issues including the definition of "'Iranian properties'" and reparation amounts relating to certain claims.

3. Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2339/2014 (UN Human Rights Commission – May 11, 2020)

<https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f128%2fD%2f2339%2f2014&Lang=en>

On May 11, 2020, the Human Rights Committee of the United Nations International Covenant on Civil and Political Rights released its views on a submission by Rizvan Taysumov et al. against the Russian Federation. Taysumov and five others were all captured by Chechen forces, detained, and interrogated; in 2006, they were tried and found guilty by the Supreme Court of the Chechen Republic. Before bringing their case to this committee, they appealed to the Supreme Court of the Russian Federation and then to the European Court of Human Rights; the latter "decided that the application was inadmissible because it had 'not satisfy(ied) the requirements established by Articles 34 and 35 of the Convention.'" In the current complaint, the authors list various abuses and violations of human rights by their captors, including "torture . . . [and] cruel, inhuman or degrading treatment," "arbitrary arrest and detention," and a violation of "their rights to a fair trial." They cited articles 7, 2(3), 9(1-4), "14(2), and 14 (3) (a), (b) and (g)" of the Covenant.

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The Committee concluded that all but one of the authors' claims were admissible under articles 2, 3, 5(2)(b) of the Optional Protocol; it decided two authors' complaints alleging a "violation of their right to a presumption of innocence" had not included sufficient evidence for the complaint to be admissible. Regarding the remaining complaints, it concluded that the evidence does not indicate "that the investigation into the allegations of torture was carried out promptly or effectively" by the state, and "lacked the element of impartiality"; the information gained from the interrogations was then unjustly used as evidence in court to establish the defendants' guilt. Regarding the authors' allegations of unlawful detention, "the Committee conclude[d] that the State party violated the rights of the authors under article 9 (2-3)" because "the authors were not informed, at the time of apprehension, of the reasons for their arrest or of the charges against them, and they were not brought promptly before a judge to verify the legality of their detention." Because the state is a party to the Covenant and was found to have violated the authors' rights as protected by the agreement, it is "require[d] . . . to make full reparation[s]" to the authors, including "a thorough, prompt and impartial investigation into the authors' allegations of torture and . . . full redress to the authors, including just compensation and other measures of satisfaction for the violations occurred."

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Human Rights Guidelines on Algorithms and Automation (Council of Europe – April 8, 2020)

<https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016809e1154>

On April 8, 2020, the Council of Europe published a set of human rights guidelines on algorithms and automation. According to a press release from the Council of Europe, the guidelines are aimed at ensuring that state governments do not breach human rights in their "use, development or procurement of algorithmic systems." The guidelines also emphasize the importance of creating effective and transparent legal systems and regulatory frameworks that "prevent, detect, prohibit and remedy human rights violations" by the public and private sectors. The guidelines constitute an appendix in a recommendation adopted by the Committee of Ministers at a meeting of the Ministers' Deputies.

2. Directive 2311.01 on the Law of War Program (U.S. Dep't Def. – July 2, 2020)

<https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/231101p.pdf?ver=2020-07-02-143157-007>

The U.S. Department of Defense (DoD) published Directive 2311.01 on its Law of War Program. The policy assigns responsibility for the Program and establishes the Department of Defense Law of War Working Group. The Law of War Working Group is tasked with advising the DoD General Counsel "on law of war matters to develop and coordinate on law of war initiatives and issues." The Directive applies to a number of offices and departments, collectively referred to as "DoD Components." It states that it is DoD policy that: (1) members of DoD components comply with the laws of war, including Common Article 3 of the 1949 Geneva Convention; (2) U.S. law of war obligations are "observed and enforced by the DoD Components and contractors of subcontractors assigned to or accompanying U.S. Armed Forces; (3) DoD Components implement programs that are aimed at effectively preventing violations of the law of war; and (4) the "acquisition, procurement, or modification of weapons or weapons systems is reviewed for consistency with the law of war." The DoD Law of War Working Group, in addition to the above tasks, will assist in the maintenance of the DoD Law of War Manual and act as the authority on the law of war within the DoD. The Working Group will also "[m]anage other law of war matters as they arise." Membership of the Working Group will include, in addition to a representative from the DoD General Counsel, elected representatives from the: (a) General Counsel of each Military Department; (b) Counsel for the Commandant of the Marine Corps; (c) Judge Advocate General of each Military Department; (d) Staff Judge Advocate to the Commandant of the Marine Corps; and (e) Legal Counsel to the Chairman of the Joint Chiefs of Staff.

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