BRIEFLY NOTED
(Not reproduced in *International Legal Materials*)
+Cite as 54 ILM 1135 (2015)+

## Judicial and Similar Proceedings

**1. Judgment of the Second Senate, No. 2 BvE 6/11 (German Federal Constitutional Court – September 23, 2015)**
*<https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2015/09/es20150923_2bve000611.html>*

On September 23, 2015, the German Federal Constitutional Court rejected a claim brought by members of the German *Bundestag* who argued that under German law, the Executive was required to obtain retrospective approval from the *Bundestag* in cases of imminent danger where the Executive is allowed, by way of exception, to approve the deployment of armed German forces abroad. All German deployments of armed forces abroad require parliamentary approval, except for certain urgent instances, which the Executive may decide alone and then seek approval for continuing deployment as soon as feasible. The Court held that when a military operation is already over, such as in the case at hand, which concerned a completed military evacuation of German citizens from the Libyan town of Nafurah in 2011, there is no requirement that the Executive must obtain approval from the *Bundestag* after the fact. The Court stated that "[d]espite the subsidiary nature of the Federal Government's emergency power, the Federal Government's emergency decision to deploy armed military forces does not require retrospective approval by the *Bundestag* in order to be effective and legal."

**2. Skerdjan Celaj Case (C-290/14) (Court of Justice of the European Union – October 1, 2015)**
*<http://curia.europa.eu/juris/document/document.jsf?text=&docid=168941&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=185399>*

On October 1, 2015, the Court of Justice of the European Union (Court) decided that EU member states can impose prison sentences on migrants who reenter the country illegally after having received an entry ban. The case concerned Mr. Celaj, an Albanian migrant who had been deported from Italy and prohibited from returning for a period of three years. Having moved back to Italy in violation of the order, Italian authorities sought to impose a prison sentence on the basis of applicable Italian legislation, and asked the Court to confirm its compatibility with EU Law, namely the Return Directive (directive) which establishes "common standards and procedures to be applied in Member States for returning illegally staying third-country nationals." The Court noted that the directive does not preclude member states from treating the violation of a reentry ban as a criminal offense and attaching criminal sanctions. It further stated that "the implementation of a return policy is an integral part of the development, by the European Union, of a common immigration policy aimed at ensuring, inter alia, the prevention of illegal immigration and enhanced measures to combat it."

**3. Judgment 4543 of 2015 (Italian Council of State – October 29, 2015)**
*<https://iusmanagement.files.wordpress.com/2015/10/n-_04543-2015_reg-ric.pdf>*

On October 26, 2015, Italy's highest administrative court (Court) ruled that same-sex marriages entered into abroad cannot be registered in Italy. The case invalidates a lower court's ruling finding in favor of various Italian cities that had been registering same sex marriages conducted abroad and granting the couples the same rights as heterosexual couples marrying outside Italy. The Court annulled that decision, noting that there was no legal framework for same-sex unions. Italy's Interior Minister stated, "Let us be clear. Marriage between two people of the same sex is not contemplated under Italian law, therefore the transcriptions made by local mayors are illegal."

## Resolutions, Declarations, and Other Documents

**1. Resolution 2242 Integrating Women, Peace and Security Issues (United Nations Security Council – October 13, 2015)**
*<http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2242(2015)>*

On October 13, 2015, the United Nations Security Council (Council) adopted a resolution designed "to integrate women, peace and security concerns across all country-specific situations on the Security Council's agenda." The Council highlighted the "differential impact on the human rights of women and girls of terrorism

https://doi.org/10.5305/intelegamate.54.6.1135 Published online by Cambridge University Press

and violent extremism, including in the context of their health, education, and participation in public life." It urged all UN entities to include "women's needs and gender perspectives" in their work, especially in policy decisions and planning processes. The Council also "expresse[d] deep concern over continuing allegations of sexual exploitation and abuse by United Nations peacekeepers and urge[d] [the] police—and troop contributing countries to provide robust pre-deployment training . . . to conduct swift and thorough investigations of their uniformed personnel and, if appropriate, to prosecute."

**2. Follow-up to the European Parliament Resolution of 12 March 2014 on the Electronic Mass Surveillance of EU citizens (European Parliament – October 29, 2015)**
*<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2015-0388+0+DOC+PDF+V0//EN>*

On October 29, 2015, the European Parliament voted to approve a resolution calling on member states to "drop any criminal charges against Edward Snowden, grant him protection and consequently prevent extradition or rendition by third parties, in recognition of his status as whistle-blower and international human rights defender." The Parliament also welcomed the European Court of Justice's decision in *Schrems v. Data Protection Commissioner*, calling on the Commission to recognize the "impact of the judgment" and to "take the necessary measures to ensure that all personal data transferred to the US are subject to an effective level of protection that is essentially equivalent to that guaranteed in the EU." The European Parliament's vote comes after the Parliamentary Assembly of the Council of Europe's vote on a resolution in June 2015 that urged the U.S. "to allow Mr Edward Snowden to return without fear of criminal prosecution under conditions that would not allow him to raise the public interest defence." The resolution calls on all member states to "enact whistle-blower protection laws also covering employees of national security or intelligence services and of private firms working in this field" and to "grant asylum, as far as possible under national law, to whistle-blowers threatened by retaliation in their home countries, provided their disclosures qualify for protection under the principles advocated by the Assembly."

**3. Catalonia Resolution on Secession from Spain (November 9, 2015)**
*<http://www.parlament.cat/document/intrade/153127>*

On November 9, 2015, the Parliament of Catalonia voted to approve a resolution to begin separation from Spain. In the resolution, "[t]he Parliament of Catalonia solemnly declares the start of the process to create an independent Catalan state in the form of a republic." The resolution also stated that Parliament "and the process of democratic disconnection from the Spanish State shall not be subject to the decisions of the institutions of the Spanish State, in particular the Constitutional Court, which it considers devoid of legitimacy and jurisdiction following its ruling of June 2010 on the Statute of Autonomy of Catalonia previously voted on by the people in a referendum, among other rulings." Additionally, "pro-independence parties in the north-eastern region hope [it] will lead to Catalonia seceding within 18 months," however, "Spain's center-right prime minister, Mariano Rajoy, said his government would seek to invalidate the motion with an appeal to the Constitutional Court in the coming days."

**4. International Humanitarian Law and the Challenges of Contemporary Armed Conflicts (ICRC – November 11, 2015)**
*<https://www.justsecurity.org/wp-content/uploads/2015/11/2015-ICRC-Report-IHL-and-Challenges-of-Armed-Conflicts.pdf>*

In November 2015, the International Committee of the Red Cross (ICRC) released a report on *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*. This is the fourth report by the ICRC on this topic, and it aims "to provide an overview of some of the challenges posed by contemporary armed conflicts for IHL, to generate broader reflection on those challenges and to outline ongoing or prospective ICRC action, positions and interest." It also addresses new topics, "such as the end of IHL applicability, the protection of medical personnel and objects, and nuclear weapons," while also giving updates on topics discussed in prior reports, including "the geographic reach of this body of norms, the use of force under IHL and international human rights law (IHRL), the use of explosive weapons in populated areas and new technologies of warfare."

https://doi.org/10.5305/intelegamate.54.6.1135 Published online by Cambridge University Press