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Judicial and Similar Proceedings

1. Request for Authorisation of an Investigation Pursuant to Article 15 (International Criminal Court – November 20, 2017)

<https://www.icc-cpi.int/CourtRecords/CR2017_06891.PDF>

On November 20, 2017, the International Criminal Court (ICC) Prosecutor Fatou Bensouda issued a formal request to the Pre-Trial Chamber to begin an investigation into alleged war crimes and crimes against humanity committed in the context of the ongoing situation in Afghanistan. The Prosecutor believes there is a reasonable basis to believe the following crimes have occurred: "i. Crimes against humanity and war crimes by the Taliban and their affiliated Haqqani Network; ii. War crimes by the Afghan National Security Forces ("ANSF"), in particular, members of the National Directorate for Security ("NDS'") and the Afghan National Police ("ANP"), and iii. War crimes by members of the United States ("US") armed forces on the territory of Afghanistan, and by members of the US Central Intelligence Agency ("CIA") in secret detention facilities in Afghanistan and on the territory of other States Parties to the Rome Statute, principally in the period of 2003-2004." If the Pre-Trial Chamber approves the request, the Prosecutor may begin the investigation, and, as mandated by the Rome Statute, "the Office's sole objective will be to independently, impartially and objectively investigate and prosecute alleged war crimes and crimes against humanity, committed in the context of the conflict in Afghanistan."

2. Prosecutor v. Ratko Mladić (International Criminal Court – November 22, 2017)

<http://www.icty.org/en/cases/party/704/4>

On November 22, 2017, the International Criminal Tribunal for the former Yugoslavia (ICTY) convicted Ratko Mladić, former Commander of the Main Staff of the Bosnian Serb Army, of genocide, crimes against humanity, and violations of the laws or customs of war. The crimes concern acts committed by Serb forces during the 1992–1995 armed conflict in Bosnia and Herzegovina (BiH). The Court convicted Mladić "of genocide and persecution, extermination, murder, and the inhumane act of forcible transfer in the area of Srebrenica in 1995; of persecution, extermination, murder, deportation and inhumane act of forcible transfer in municipalities throughout BiH; of murder, terror and unlawful attacks on civilians in Sarajevo; and of hostage-taking of UN personnel." The Chamber considered the crimes committed to "rank among the most heinous known to humankind" and decided "that most of the factors raised in mitigation by the Defence carry little or no weight." The Chamber sentenced Mladić to life imprisonment.

3. Ahmed Salem Bin Ali Jaber v. United States (U.S. Court of Appeals for the D.C. Circuit – June 30, 2017)

<https://www.cadc.uscourts.gov/internet/opinions.nsf/55ACB57812F8FC918525814F00517DA6/$file/16-5093-1682112.pdf>

On November 27, 2017, the U.S. Supreme Court denied certiorari in *Ahmed Salem Bin Ali Jaber v. United States*, in which the U.S. Court of Appeals for the D.C. Circuit dismissed a lawsuit brought by the families of two men allegedly killed in a U.S. drone strike in Yemen in 2012. The families sought "a declaratory judgment stating their family members were killed in the course of a U.S. drone attack in violation of international law governing the use of force, the Torture Victim Protection Act ('TVPA'), and the Alien Tort Statute ('ATS')." The D.C. Circuit Court held that the claims are nonjusticiable under the political question doctrine and, citing the Court's 2010 opinion in *El-Shifa Pharmaceutical Industries v. United States*, stated, "Under the political question doctrine, the foreign target of a military strike cannot challenge in

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court the wisdom of [that] military action taken by the United States. Despite their efforts to characterize the case differently, that is just what the [P]laintiffs have asked us to do. The district court's dismissal of their claims is [a]ffirmed." Judge Janice Rogers Brown, who wrote the opinion for the Court, goes on to note in a separate concurring opinion that while it is reasonable that the courts not second-guess an Executive's decision about a military response to a singular threat, "it's doctrine, however, seems a wholly inadequate response to an executive decision—deployed through the CIA/JSOC targeted killing program—implementing a standard operating procedure that will be replicated hundreds if not thousands of times." She ends by stating, "The Executive and Congress must establish a clear policy for drone strikes and precise avenues for accountability."

4. Merabishvili v. Georgia (European Court of Human Rights – November 28, 2017)

<https://hudoc.echr.coe.int/eng?i=001-178753>

On November 28, 2017, the European Court of Human Rights ruled in *Merabishvili v. Georgia* that Georgia had violated the rights of former Prime Minister of Georgia, Ivane Merabishvili, by holding him in pre-trial detention that was initially justified, but later deemed to be a means of exerting pressure on him in order to obtain information. Merabishvili argued "that the arrest and the pre-trial detention had aimed to remove him from the political scene, and that the Chief Public Prosecutor . . . had attempted to use his detention as leverage to pressure him to provide information about the foreign bank accounts of the former President of Georgia Mikheil Saakashvili and about the death in 2005 of the former Prime Minister of Georgia Zurab Zhvania." Although the Court determined that the detention was initially valid and not principally meant to remove him from the political scene, subsequently, the main purpose of the detention became "to obtain information about Mr Zhvania's death and Mr Saakashvili's bank accounts. It was thus chiefly meant for an ulterior purpose not prescribed by the Convention." The Court unanimously held that there had been a violation of Article 5 § 3 (entitlement of a detainee to trial within a reasonable time or to release pending trial) after his pre-trial detention ceased to be based on sufficient grounds, and by nine votes to eight, a violation of Article 18 (limitation on use of restrictions on rights) taken in conjunction with Article 5 § 1 (right to liberty and security). The Court also provided an overview of the existing caselaw on Article 18, noting that this case had demonstrated the need to clarify the history and use of Article 18.

5. Prosecutor v. Jadranko Prlić et al. (International Criminal Court – November 29, 2017)

<http://www.icty.org/case/prlic/4#acjug>

On November 29, 2017, the International Criminal Tribunal for the former Yugoslavia (ICTY) issued its final judgment in *Prosecutor v. Jadranko Prlić et al.*, affirming nearly all the convictions against the defendants Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić. The case relates to events within Bosnia and Herzegovina from 1992 to 1994 for which the defendants were "convicted of crimes against humanity, violations of the laws or customs of war, and grave breaches of the Geneva Conventions, specifically murder, wilful killing, persecutions on political, racial and religious grounds, deportation, unlawful transfer of civilians, imprisonment, unlawful confinement of civilians, unlawful labour, inhumane acts, inhuman treatment, extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly, destruction or wilful damage done to institutions dedicated to religion or education, unlawful attack on civilians, and unlawful infliction of terror on civilians." The Court also affirmed the Trial Chamber's conclusion that they were involved in a joint criminal enterprise "aimed at creating a Croatian entity in Bosnia and Herzegovina that would facilitate the reunification of the Croatian people, through ethnic cleansing of the Muslim population."

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6. First Nation of Nacho Nyak Dun v. Government of Yukon (Supreme Court of Canada – December 1, 2017)

<https://scc-csc.lexum.com/scc-csc/scc-csc/en/16890/1/document.do>

On December 1, 2017, the Supreme Court of Canada ruled in *First Nation of Nacho Nyak Dun v. Government of Yukon* that the Yukon government had acted improperly when it failed to consult any of the First Nations prior to adopting a final plan for the Peel Watershed that made substantial changes to the previously proposed plan and which increased access and development in the area. The Court held that the Yukon government did not act in accordance with the 1993 Umbrella Final Agreement that had created a land-use planning process for agreements between the Yukon government, the Canadian government, and the Council for Yukon Indians, which represent the First Nations. The agreements "recognize the traditional territories of the First Nations in the Yukon portion of the Peel Watershed and their right to participate in the management of public resources in that area" and the Umbrella Final Agreement gives the First Nations the right to "approve, reject, or modify the Final Recommended Plan after consultation." The Court found that "Yukon did not have the authority to make the extensive changes that it made to the Final Recommended Plan," quashed Yukon's approval of its plan, and returned "the parties to the stage in the land use plan approval process where Yukon could 'approve, reject or modify' the Final Recommended Plan after consultation."

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Indigenous Women and Their Human Rights in the Americas (Inter-American Commission on Human Rights – October 27, 2017)

<http://www.oas.org/en/iachr/reports/pdfs/IndigenousWomen.pdf>

On October 27, 2017, the Inter-American Commission on Human Rights (IACHR) published a report on the human rights of indigenous women in the Americas. The IACHR has consistently received information regarding numerous human rights violations of indigenous women in the Americas and this report aims to "constitute an important step forward in dealing with the specific priority situation of indigenous women with the goal of promoting that States and the international community undertake further research and analysis of these topics." The report documents the ways indigenous women have historically faced prejudice based on the multiple facets of their identities and highlights how "political, social, and economic marginalization of indigenous women contributes to a continuous situation of structural discrimination and makes them particularly susceptible to a variety of acts of violence prohibited by the Inter-American Convention on the Prevention, Eradication and Punishment of Violence against Women." It contains six chapters that address IACHR activities pertaining to indigenous women's rights; guiding legal principles for states to consider; the different dimensions of violence against indigenous women; access to justice and the obstacles indigenous women face; challenges to their basic economic, social, and cultural rights; as well as conclusions and recommendations.

2. Resolution A/HRC/S-27/L.1 (United Nations Human Rights Council – December 5, 2017)

<http://ap.ohchr.org/documents/E/HRC/d_res_dec/A_HRC_S_27_L1.docx>

On December 5, 2017, the UN Human Rights Council concluded a special session on the human rights situation of the Rohingya Muslims and other minorities in the Rakhine state of Myanmar and passed a resolution condemning the alleged human rights abuses taking place there. The Human Rights Council expressed its concern over reports of human rights abuses by security forces and non-state actors, including extrajudicial and summary killing, sexual violence, destruction of property, torture, and large-scale displacement, which very likely amount to the commission of crimes against humanity. The Council called upon the Myanmar government to take the necessary steps to ensure the protection of human rights of all people within the state and to

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"ensure the full accountability of perpetrators and end impunity for all violations and abuses of human rights, including, in particular, those perpetrated against persons belonging to the Rohingya Muslim community and other minorities." The Council also asked the High Commissioner for Human Rights "to prepare a comprehensive written report on the situation, including on the level of cooperation and access given to the fact-finding mission and other United Nations human rights mechanisms, the implementation of the present resolution, the findings and recommendations of the United Nations system on the situation of human rights of Rohingya people in Rakhine State and recommendations on a future course of action."

3. Resolution 2389 (United Nations Security Council – December 8, 2017)

<http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2389(2017)>

On December 8, 2017, the UN Security Council passed Resolution 2389, welcoming the renewed commitment of signatories to the Peace, Security and Cooperation (PSC) Framework for the Democratic Republic of the Congo (DRC) and the Region and calling on states to abide by commitments made in the PSC. The Security Council reiterated "that the PSC Framework remains an essential mechanism to achieve durable peace and stability in the DRC and the Region." The Council also noted its concern regarding the illicit flow of weapons throughout the DRC and their use among armed groups, strongly condemned the actions of armed groups operating in the region in violation of international humanitarian law, and demanded that such groups "cease immediately all forms of violence and other destabilizing activities, including the exploitation of natural resources, and that their members immediately and permanently disband, lay down their arms, and liberate and demobilize all children from their ranks." The original signatories to the agreement are Angola, Burundi, Central African Republic, Congo, Rwanda, South Africa, South Sudan, Uganda, United Republic of Tanzania and Zambia, and its guarantors are the African Union, the International Conference on the Great Lakes Region, the Southern African Development Community, and the United Nations.

4. Buenos Aires Declaration on Trade and Women's Economic Empowerment (World Trade Organization – December 11, 2017)

<https://www.wto.org/english/thewto_e/minist_e/mc11_e/genderdeclarationmc11_e.pdf>

On December 11, 2017, members and observers at the World Trade Organization Ministerial Conference issued the Buenos Aires Declaration on Trade and Women's Economic Empowerment, calling for increased participation of women in trade. Through the Declaration, members and observers have agreed to "to collaborate on making our trade and development policies more gender-responsive," through methods including exchanging information on policies and programs to encourage women's participation in trade, sharing best practices on gender-based analyses of trade policies as well as procedures for collecting gender-disaggregated data, and working to remove barriers to women's economic empowerment. Progress on the implementation of the joint declaration will be reported in 2019. The Declaration marks the first time WTO members and observers have endorsed an initiative calling for greater participation of women in trade.

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