BRIEFLY NOTED
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Resolutions, Declarations, and Other Documents

1. U.N. Report of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security (June 24, 2013)
<http://www.un.org/ga/search/view_doc.asp?symbol=A/68/98>

The U.N. Group of Government Experts on Developments in the Field of Information and Telecommunications in the Context of International Security issued a report, U.N. Doc A/68/98, finding that international law applies to States' use of information and communication technologies (ICTs). The report stresses that "state sovereignty and the international norms and principles that flow from it apply to States' conduct of ICT-related activities and to their jurisdiction over ICT infrastructure with their territory; States must meet their international obligations regarding internationally wrongful acts attributable to them." The report recommends that States take various measures to build "trust, transparency, and confidence" in ICT systems, and encourages increased dialogue between States to "build capacity for ICT security, especially in developing countries."

Judicial and Similar Proceedings

1. National Association of Manufacturers et al. v. Securities and Exchange Commission (D.D.C. July 23, 2013)
<https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2013cv0635-37>

The United States District Court for the District of Columbia upheld a Securities and Exchange Commission (SEC) rule that requires companies to disclose whether any "conflict minerals" are used in their products.

The SEC promulgated the rule pursuant to Section 13(p) of the Securities and Exchange Act of 1934, which was added by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. According to the decision, quoting the statute and Congressional Record, Congress passed the relevant provisions of the Dodd-Frank Act because "'the exploitation and trade of conflict minerals originating in the [Democratic Republic of the Congo (DRC)] is helping to finance conflict characterized by extreme levels of violence in the eastern [DRC], particularly sexual and gender-based violence, and contributing to an emergency humanitarian situation.'" Congress determined that "requiring companies 'to make public and to disclose annually to the [SEC] if the minerals in their products originated or may have originated in Congo' will help 'to ensure activities involving such minerals did not finance or benefit armed groups.'"

As described in the decision, the challenged SEC Conflict Minerals Rule requires "reporting companies" to "conduct a 'reasonable country of origin inquiry' regarding their conflict minerals." If a possible link to the DRC or an adjoining country (including Angola, Burundi, Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia) is discovered, it mandates that companies must "exercise 'due diligence' in an effort to more definitively determine 'the source and chain of custody' of their conflict minerals." Under the rule, these findings must be reported to the SEC and published on the company's website.

The Plaintiffs, the National Association of Manufacturers, the Chamber of Commerce, and Business Roundtable, challenged the SEC rule as arbitrary and capricious under the Administrative Procedure Act, and argued that the requirement to publish conflict mineral disclosures on their own websites is compelled speech that violates the First Amendment of the U.S. Constitution. The District Court found "no problems with the SEC's rulemaking" and disagreed that "the 'conflict minerals' disclosure scheme transgresses the First Amendment." As such, the District Court denied the Plaintiffs' motion for summary judgment and granted the Commission's (and intervening Amnesty International's) cross-motions for summary judgment.

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2. Awad v. Ziriax (D. Okla. August 15, 2013)
<https://www.aclu.org/files/assets/awad_v_ziriax_--_order.pdf>

The United States District Court for the Western District of Oklahoma held that an Oklahoma state constitutional amendment that would have prohibited state court judges from considering international law or Sharia law when deciding cases is unconstitutional.

The proposed amendment, Oklahoma State Question 755 (SQ 755), was approved by 70.08% of Oklahomans in November, 2010. The Plaintiffs challenged the constitutionality of SQ 755, alleging that it violated the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution. The Plaintiffs sought to enjoin the certification of the election results, and the District Court granted a preliminary injunction in 2010. The Defendants appealed to the Tenth Circuit, which affirmed the District Court's grant of a preliminary injunction on January 10, 2012. The Plaintiffs filed a complaint in the District Court on July 29, 2012, and the parties then "cross-moved for summary judgment on the sole issue in [the] case — whether defendants should be permanently enjoined from certifying the election results for SQ 755."

The District Court held in favor of the plaintiffs on the merits. Because the defendants "failed to assert a compelling state interest," and thus did not satisfy strict scrutiny, the Court found "that the proposed amendment's references to Sharia law violate the Establishment Clause." Further, the Court found that "the unconstitutional Sharia law provisions are not severable from the remainder of the proposed amendment and the whole amendment must fall." Accordingly, the District Court permanently enjoined the defendants from certifying the election results for SQ 755.

3. Agency for International Development et al. v. Alliance for Open Society International (U.S. Sup. Ct. June 20, 2013)
<http://www.supremecourt.gov/opinions/12pdf/12-10_21p3.pdf>

In *Agency for International Development et al. v. Alliance for Open Society International, Inc., et al.,* the Supreme Court ruled, by seven to two, that a portion of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 violated the First Amendment because it required that no federal funds may be used by an organization "that does not have a policy explicitly opposing prostitution and sex trafficking" (the requirement). The majority held that the requirement "compel[led] as a condition of federal funding the affirmation of a belief that by its nature cannot be confined within the scope of the Government program." The majority reasoned that the requirement would effectively force organizations into the position of advocating for a certain belief, "then turn around and assert a contrary belief, or claim neutrality, when participating in activities on its own time and dime." In his dissenting opinion, Justice Scalia, joined by Justice Thomas, argued that the requirement did not violate the First Amendment because it was it was "nothing more than a means of selecting suitable agents to implement the Government's chosen strategy to eradicate HIV/AIDS."

The respondents in this case were "a group of domestic organizations engaged in combating HIV/AIDS overseas." They feared that adopting a policy explicitly opposing prostitution would alienate them with certain foreign governments and diminish the effectiveness of their work with prostitutes in the fight against HIV/AIDS.

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