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BRIEFLY NOTED

(Not reproduced in *International Legal Materials*)

Judicial and Similar Proceedings

1. Jam v. International Finance (D.C. Cir.)

<https://www.cadc.uscourts.gov/internet/opinions.nsf/2D544E1FE69BA83C8525870A0055554E/$file/20-7092-1905096.pdf>

The appellants originally brought this case against the World Bank Group's financing arm, the International Finance Corporation (IFC), alleging that IFC negligently funded (via a company based in India) a power project in India that damaged the appellants' environment, health, and livelihoods. The issue of whether IFC was immune from suit under the International Organizations Immunities Act of 1945 went to the Supreme Court, which decided in 2019 that international organizations enjoy the same immunity from suit that foreign governments enjoy under the Foreign Sovereign Immunities Act—meaning that they can be sued in the U.S. if their actions fall within one of the exceptions to the FSIA, including the exception for "commercial activities." The Supreme Court's decision was published in full in Volume 58, Issue 3 of *International Legal Materials*. This was a reversal from existing jurisprudence, which had held that international organizations (unlike foreign governments) had near-absolute immunity from lawsuits under the Foreign Sovereign Immunities Act and the International Organizations Immunities Act. The case was remanded to the D.C. District Court, which dismissed the complaint in February 2020 because the "gravamen" of the complaint occurred outside the U.S., rendering the commercial activities exception inapplicable. Budha Jam et al. appealed that decision to the D.C. Circuit Court, which affirmed the lower court's decision in July 2021. The Court rejected the appellants' argument that the significant activity was IFC decision-making in the U.S., agreeing with the District Court that the gravamen of the complaint occurred outside the U.S.

2. BEG SpA v. Italy (European Court of Human Rights – May 20, 2021)

<http://hudoc.echr.coe.int/eng?i=001-210014>

This case is an interesting intersection between private and public international law. It concerned the issue of impartiality under Article 6 of the ECHR in the context of arbitration proceedings and the extent to which a state is responsible for guaranteeing that the right is protected for parties. BEG had entered into an agreement with Enelpower that included an arbitration clause, which BEG exercised some years after their partnership. An award dismissing BEG's claim was issued and then deposited with the Rome District Court for enforcement. The day prior to filing it for enforcement, BEG discovered that the arbitrator appointed to represent Enelpower had ties to Enelpower's parent company, ENEL. Moreover, the arbitrator had failed to sign a declaration indicating the absence of any conflicts of interest, at the time of his appointment. In light of this development, BEG submitted a request for the arbitrator's removal and filed an application to nullify the award, which was ultimately dismissed by the domestic courts. BEG then took the case to the ECtHR, alleging a violation of the right to an independent and impartial tribunal in article 6. Although the Court had previously considered the relationship between Article 6 and arbitral proceedings (see *Mutu and Pechstein v. Switzerland*) it had not ruled on several questions, including whether the Court itself could question a domestic court's evaluation of an arbitral tribunal's independence and impartiality.

The Court began by noting that because Italian law "conferred jurisdiction on the domestic courts to examine the validity of arbitral awards" and the courts had exercised that jurisdiction, the Court has jurisdiction to consider "the acts and omissions of the [Arbitration Chamber of the Rome Chamber of Commerce] as validated by the Italian domestic courts." Therefore, the Court can ultimately make determinations about an arbitral tribunal's compliance with the Article 6 right to a fair trial in the Convention, if such issue was litigated in the domestic courts. The Court went ono to hold that the impartiality of the arbitrator "was capable of being, or at least appearing, open to doubt" and that BEG's concerns in that regard should be considered "reasonable and well-founded."

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3. IX and MH Müller Handels GmbH v. WABE eV and MJ (Court of Justice of the European Union – July 15, 2021)

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=244180&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=2158975>

On July 15, 2021, the Court of Justice of the European Union (CJEU) ruled in favor of permitting workplaces to prohibit the wearing of articles of clothing that display religious or political alignment. The issue in *IX and MH Müller Handels GmbH v. WABE eV and MJ* originated from an incident involving two female employees that refused to remove their dressings that indicated their identity as practicing Muslims. Two exterior courts (Labour Court of Hamburg and the Federal Labour Court of Germany) sought the perspective of the CJEU to determine whether the termination of their employment was justifiable and in accordance with EU law. One was let go from a daycare center, and the other from a drugstore company. Both women made similar arguments regarding religious freedom and discrimination, but the Court held that if workplace guidelines issue this policy for all dressings, then it cannot be considered prejudicial or unjustifiable. This was, however, not applicable to cases of professional settings specifically banning "conspicuous large-sized signs of political, philosophical or religious beliefs," which would be considered targeting and constitute a violation of personal liberties. The Court stated that if this "rule is applied in a general and undifferentiated way", then these professional spaces were entitled to enforce this policy. Other incidents have paralleled this one in neighboring countries. As reported by JURIST, the Austrian Constitutional Court determined that restricting headscarves from being worn on elementary school grounds was considered an infringement on equalized religious practice in December of 2020.

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy (O.E.C.D. and G20)

<https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.htm>

The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting agreed the above statement on October 8, 2021, which, at the time of writing had the agreement of 137 member jurisdictions which represent more than 90 per cent of the global GDP. The Two-Pillar Solution will reallocate taxing rights from approximately 100 of the world's largest and most profitable multinational enterprises (MNEs) with the aim of ensuring that those MNEs pay a fair share of tax no matter in which jurisdiction they operate. Pillar One establishes the reallocation of taxing rights with the expectation that developing country revenue gains will be greater than those in developed economies. It will initially apply to MNEs with a global turnover of more than 20 billion euros. Pillar Two introduces a global minimum corporate tax of 15 percent for companies with revenue over 750 million euros to help countries protect their tax bases and put a floor on tax competition on corporate income tax. It is expected to generate USD 150 billion in new tax revenue annually, worldwide. States aim to sign a multilateral convention in 2022 to implement Pillar One, and the OECD will develop model rules in the same year for states to implement Pillar Two into domestic legislation

2. Executive Order 14014 (United States – July 2, 2021)

<https://www.state.gov/the-united-states-takes-further-actions-against-the-burmese-military-regime/>

On July 2, 2021, the U.S. announced that it was imposing additional sanctions on the Myanmar military regime. A statement by Secretary of State Antony J. Blinken issued on that same date indicated that the U. S. Department of the Treasury's Office of Assets Control designated 22 people under Executive Order 14014. The statement also noted that the Department of Commerce added Wanbao Mining Ltd., two of its subsidiaries, and King Royal Technologies to its entities list because of their "revenue and/or other support to the Burmese military." Secretary Blinken stated, "[t]oday's measures further demonstrate that we will continue to take additional action against, and impose costs on, the military and its leaders until they reverse course and provide for a return to democracy."

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