Copyright © 2017 by The American Society of International Law
doi:10.1017/ilm.2017.36

BRIEFLY NOTED

(Not reproduced in *International Legal Materials*)

Judicial and Similar Proceedings

1. Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina (European Court of Human Rights – June 27, 2017)

<http://hudoc.echr.coe.int/eng?i=001-170663>

On June 27, 2017, the grand chamber of the European Court of Human Rights ruled in *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* that there had been no violation of the right to freedom of expression in a finding of defamation against four NGOs for the publication of a letter containing untrue allegations about the entertainment editor of a public radio station. The NGOs had sent the letter to "the highest authorities of their district complaining about a person's application for the post of director of Brčko District's multi-ethnic radio and television station" and it was later published in several newspapers. The Court determined that "the applicants had not established before the domestic courts the 'truthfulness of these statements which they knew or ought to have known were false' despite being bound by the requirement to verify the veracity of their allegations even if these had been disclosed to the authorities by means of private correspondence." The Court therefore held "that the applicants had not had a sufficient factual basis to support their allegations and that the interference with their freedom of expression had been supported by relevant and sufficient reasons and had been proportionate to the legitimate aim pursued." The Court further noted that the domestic court had struck a balance between protecting the reputation of the individual at issue and the applicants' freedom of expression.

2. In the Matter Of An Arbitration Under the Arbitration Agreement Between the Government of the Republic of Croatia and the Government of the Republic of Slovenia, Signed on 4 November 2009 (Permanent Court of Arbitration – June 29, 2017)

<https://pcacases.com/web/sendAttach/2172>

On June 29, 2017, an Arbitral Tribunal at the Permanent Court of Arbitration issued a final award on the territorial and maritime dispute between Croatia and Slovenia regarding three issues: "(a) the course of the maritime and land boundary between the Republic of Croatia and the Republic of Slovenia, (b) Slovenia's junction to the High Sea and (c) the regime for the use of the relevant maritime areas." The Tribunal fixed the territorial boundaries in more than twenty areas, using as their basis the cadastral boundaries that the Austrian Empire established in the 1800s for tax purpose, though they also examined "in respect of each of the disputed areas whether there are reasons for applying other criteria." In regard to what Slovenia calls the "Bay of Piran" and Croatia calls the "Bay of Savudrija/Piran," "Croatia ask[ed] the Tribunal to make the delimitation along a median line; Slovenia claim[ed] the whole of the Bay." The Tribunal determined that delimitation must be based on evidence from the date of independence in 1991 and decided on a "delimitation [that] leaves the larger part of the Bay to Slovenia." On the question of the territorial sea, the Tribunal noted that under the United Nations Convention on the Law of the Sea, "international law calls for the application of an equidistance line, unless another line is required by special circumstances." The Tribunal determined that Cape Savudrija "produces a disproportionate adverse effect if the strict equidistance line is used" and consequently, found "that the equidistance line must be adjusted in favour of Slovenia." In deciding on Slovenia's "junction to the High Sea," the Tribunal determined that "junction" meant a direct connection between Slovenia's territorial waters and the high seas, beyond the territorial seas of Croatia and Italy. Since the tribunal found that no part of Slovenia's waters directly overlap with an area of the "high sea," it decided it was necessary to create a "Junction Area" in Croatia's territorial sea "in which freedom of communications between those

https://doi.org/10.1017/ilm.2017.36 Published online by Cambridge University Press

two zones is guaranteed." Croatia has refused to participate in the proceedings since 2015 and has stated that it does not consider them binding.

3. Toshiba v. Commission (Court of Justice of the European Union – July 16, 2017)

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=192401&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=2642142>

On July 6, 2017, the Court of Justice of the European Union ruled in *Toshiba v. Commission* to uphold a €61.44 million fine on Toshiba (including a further amount of €4.65 million joint and severally with Mitsubishi) for its participation in a cartel on the market for gas insulated switchgear (GIS) between 1988 and 2004. The "undertakings which participated in the cartel concluded an agreement with a view to coordinating their commercial activity worldwide and developed a quota system aimed at determining the market shares which each group could share among its members." In January 2007, the European Commission imposed a fine of €86.25 million on Toshiba, in addition to the €4.65 million with Mitsubishi, and after a finding from the General Court "that the Commission had infringed the principle of equal treatment in calculating those fines," the Commission recalculated the numbers and fined Toshiba €56.79 million, plus the €4.65 million to be paid joint and severally with Mitsubishi. The General Court upheld challenges to those figures and the Court in the instant case dismissed Toshiba's appeal of that judgment, holding that, *inter alia*, "the fact that, in 2003, Toshiba had no turnover of its own in the GIS sector is a factor which objectively differentiates its situation from that of other undertakings that participated in the cartel, in particular the European undertakings. Toshiba cannot therefore assert an infringement of the principle of equal treatment in that respect."

4. Prosecutor v. Gbagbo and Blé Goudé (International Criminal Court – July 19, 2017)

<https://www.icc-cpi.int/CourtRecords/CR2017_04684.PDF>

On July 19, 2017, the Appeals Chamber of the International Criminal Court (ICC) ruled in *Prosecutor v. Gbagbo and Blé Goudé* to reverse the Trial Chamber I decision that Laurent Gbagbo should continue to be detained and ordered the Chamber to carry out a new review. The Appeals Chamber stated that "Trial Chamber I should have considered the duration of time Mr Gbagbo has spent in detention alongside the risks being reviewed and it should have determined whether, all factors being considered, Mr Gbagbo's detention continues to be reasonable." The presiding judge also noted that the Court had "erred in taking into account the fact that a person denies responsibility for the charges he faces, as a factor favouring detention" and had also "erred by considering Mr Gbagbo's advanced age as a factor that increased his desire to abscond, rather than one that may potentially mitigate the possibility of absconding."

5. Belkacem v. Belgium (European Court of Human Rights – July 20, 2017)

<http://hudoc.echr.coe.int/eng?i=001-175941>

On July 20, 2017, the European Court of Human Rights ruled in *Belkacem v. Belgium* that hate speech by the leader of a radical Salafist organization was not protected speech under the European Convention on Human Rights. The "case concerned the conviction of Mr Belkacem, the leader and spokesperson of the organisation 'Sharia4Belgium', which was dissolved in 2012, for incitement to discrimination, hatred and violence on account of remarks he made in YouTube videos concerning non-Muslim groups and Sharia." The Court noted that the speech at issue had hateful content and was aimed at stirring up discrimination and violence towards non-Muslims, and "observed that it had previously ruled that defending Sharia while calling for violence to establish it could be regarded as 'hate speech', and that each Contracting State was entitled to oppose political movements based on religious fundamentalism." Consequently the Court unanimously declared the

https://doi.org/10.1017/ilm.2017.36 Published online by Cambridge University Press

application inadmissible and found that "it was incompatible with the provisions of the Convention and that Mr Belkacem had attempted to deflect Article 10 of the Convention from its real purpose by using his right to freedom of expression for ends which were manifestly contrary to the spirit of the Convention."

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. Resolution on Technical Assistance to the Democratic Republic of the Congo Concerning the Events in Kasai (United Nations Human Rights Council – June 23, 2017)

<http://ap.ohchr.org/Documents/E/HRC/d_res_dec/A_HRC_35_L.36.docx>

On June 23, 2017, the United Nations Human Rights Council adopted a resolution directing the UN High Commissioner for Human Rights to send a team of international experts to investigate alleged human rights violations and abuses in the central Kasai region of the Democratic Republic of Congo (DRC). The resolution requests the international experts be sent "to collect and preserve information, to determine the facts and circumstances in accordance with international standards and practice concerning alleged human rights violations and abuses, and violations of international humanitarian law in the Kasai regions." The resolution also urged the DRC government "to organize, as soon as possible, fair trials that respect international standards in the fight against impunity for the atrocities committed in the Kasai provinces" and requested that the UN High Commissioner "provide the necessary technical assistance and advisory services to assist the Government of the Democratic Republic of the Congo to complete its investigatory work concerning allegations of violations and abuses committed in the Kasai region."

2. Resolution 2368 (United Nations Security Council – July 20, 2017)

<http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2368(2017)>

On July 20, 2017, the UN Security Council passed a resolution reaffirming its resolve to combat terrorism. The Council unanimously adopted the resolution, which was aimed at "reinforcing its resolve to adapt to evolving terrorist threats, encouraging Governments to update their methods for cutting off funds to terrorist groups, preventing their travel, banning them from acquiring arms and ensuring that sanctions were fully implemented." Acting under Chapter VII of the UN Charter, the Council detailed the sanctions currently imposed on ISIL, Al-Qaida, and associated individuals and groups, and also reaffirmed past decisions from the Council on these issues. In the resolution, the Council also extended the mandates of the Office of the Ombudsperson and the New-York based Analytical Support and Sanctions Monitoring Team for twenty-four months beyond their December 2019 expirations.

3. Report of a Mission of the United Nations High Commissioner for Human Rights – accounts of Congolese fleeing the crisis in the Kasai region, in the Democratic Republic of the Congo (Office of the High Commissioner for Human Rights – August 4, 2017)

<http://www.ohchr.org/Documents/Countries/Africa/OHCHRMissionreportonaccountsofKasairefugees.docx>

On August 4, 2017, the Office of the High Commissioner for Human Rights released a report detailing the violence that a team of human rights officers documented through interviewing refugees in Angola who had fled violent attacks in the Kasai province of the Democratic Republic of the Congo (DRC). The report notes that the human rights violations at issue took place between March 12 and June 19, 2017, and that DRC government armed forces and pro-government militia attacks against civilians were often conducted along ethnic lines. The office of the United Nations High Commissioner for Human Rights (UNHCR) has stated that "approximately 30,000 people fled the Kasai to Angola between April and 22 June 2017 while 1.3 million people were internally displaced." The report further states that the crisis began in August 2016

https://doi.org/10.1017/ilm.2017.36 Published online by Cambridge University Press

over a local dispute concerning chieftaincy and traditional rights, but that it has evolved since then to take on "a more pronounced ethnic dimension, with attacks that were well planned and systematic and targeted the population of several villages." UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein's also commented on the report: "Their accounts should serve as a grave warning to the Government of the DRC to act now to prevent such violence from tipping into wider ethnic cleansing."

4. UNAMA Human Rights Report on Mass Killings in Mirza Olang (United Nations Assistance Mission in Afghanistan – August 20, 2017)

<https://unama.unmissions.org/sites/default/files/20_august_2017_-_unama_human_rights_report_on_mass_killings_in_mirza_olang_english.pdf>

On August 20, 2017, the UN Assistance Mission in Afghanistan (UNAMA) released a special report on attacks in Mirza Olang, Sari Pul Province, Afghanistan, from August 3–5, 2017. The report details UNAMA's initial findings from its human rights fact-finding attack on Mirza Olang village. The report states that "UNAMA verified allegations that Taliban and local self-proclaimed Islamic State / Daesh fighters killed at least 36 persons, including civilians and person hors de combat, during the attack on Mirza Olang. At least half of the killings took place on Saturday 5 August when Anti-Government Elements stopped families trying to escape the village, separated women and young children, and killed at least 18 people, both civilians and Pro-Government Militia who were hors de combat at the time of their killing." The report further notes that these attacks "constitute violations of international humanitarian law and may amount to war crimes as they appear to have deliberately targeted both civilians and persons who were hors de combat while in the power of an adverse party." UNAMA recommended that the Taliban "[i]mmediately cease the deliberate targeting of all civilians and civilian objects" and that the government of Afghanistan "[e]nsure that investigations of the attack are prompt, impartial and transparent, and ensure accountability for perpetrators and appropriate redress for the victims."

https://doi.org/10.1017/ilm.2017.36 Published online by Cambridge University Press