

would be barred from designation as a beneficiary developing country under section 502(b)(2) of the 1974 Act.

Pursuant to section 502(d) of the 1974 Act, having considered the factors set forth in section 502(b)(2)(E), I have determined that it is appropriate to suspend Argentina's designation as a beneficiary country under the GSP program because it has not acted in good faith in enforcing arbitral awards in favor of U.S. owned companies.⁴

BRIEF NOTES

United States Transfers Alleged Pirates to Seychelles for Trial

In March 2012, the United States transferred fifteen suspected Somali pirates previously held on a succession of U.S. Navy vessels to the Republic of Seychelles for trial.¹ The USS *Kidd* captured the suspects and freed thirteen Iranian hostages in January 2012 when its crew members boarded an Iranian dhow being used as a mother ship for pirate attacks.² The defendants will be tried in a special antipiracy court created with financial assistance from the United Nations; according to undated information on the website of the UN Office on Drugs and Crime, "Seychelles, despite its tiny size, has undertaken 31 prosecutions and already convicted 22 suspects."³

The U.S. Department of State issued a statement applauding the decision of the Republic of Seychelles to prosecute the accused and its other actions to combat piracy.

We welcome today's decision by the Republic of Seychelles to accept 15 suspected pirates for prosecution in connection with an alleged attack on a merchant ship and the abduction of 13 Iranian fishermen rescued by the U.S. Navy on January 5. Today, these individuals join more than 1,060 other suspected pirates facing justice in more than 20 countries.

We appreciate Seychelles' regional leadership on counter-piracy, as seen in their willingness to prosecute and incarcerate Somali pirates, as well as their plans to host a regional intelligence coordination center to support future piracy prosecutions. The successful resolution of this incident marks a positive step forward for building a strong and unified international response against piracy originating from Somalia and for promoting freedom of navigation worldwide.⁴

International Arms Dealer Viktor Bout Convicted, Sentenced to Twenty-Five Years

In April 2012, following his November 2011 conviction by a jury in U.S. federal court for conspiring to kill U.S. nationals and other serious offenses, international arms dealer Viktor Bout was sentenced to twenty-five years in prison.⁵ Bout insisted that he was innocent

⁴ White House Press Release, Presidential Memoranda—Trade Act of 1974 Argentina (Mar. 26, 2012), at <http://www.whitehouse.gov/the-press-office/2012/03/26/presidential-memoranda-trade-act-1974-argentina>.

¹ C. J. Chivers, *Somali Suspects in Hijacking of Iranian Ship Face Piracy Trial in Seychelles*, N.Y. TIMES, Mar. 7, 2012, at A9.

² Craig Whitlock & Jason Ukman, *U.S. Rescues Iranian Ship from Pirates*, WASH. POST, Jan. 7, 2012, at A1.

³ United Nations Office on Drugs and Crime, UNODC and Piracy, available at <http://www.unodc.org/unodc/en/piracy/index.html?ref=menuaside>.

⁴ U.S. Dep't of State Press Release No. 2012/341, Republic of Seychelles Prosecution of Suspected Pirates (Mar. 6, 2012), at <http://www.state.gov/t/pa/prs/ps/2012/03/185289.htm>.

⁵ John R. Crook, *Contemporary Practice of the United States*, 105 AJIL 122, 149 (2011).

and “never intended to sell arms to anyone.”⁶ Russian officials denounced his sentence, calling it “baseless and biased” and warning that it could impair U.S.-Russian relations.⁷ Excerpts from a press release by the U.S. Attorney’s Office for the Southern District of New York follow:

Preet Bharara, the United States Attorney for the Southern District of New York, announced that international arms dealer VIKTOR BOUT was sentenced today to 25 years in prison for conspiring to sell millions of dollars worth of weapons, including hundreds of surface-to-air missiles and over 20,000 AK-47s to the Fuerzas Armadas Revolucionarias de Colombia (the “FARC”), a designated foreign terrorist organization based in Colombia. BOUT understood that the weapons would be used to kill Americans in Colombia. On November 2, 2011, BOUT was convicted on all four counts for which he was charged after a three-week jury trial before U.S. District Judge Shira A. Scheindlin.

....

According to the Indictment and evidence presented at the trial:

Since the 1990s, BOUT has been an international weapons trafficker. As a result of his weapons trafficking activities in Liberia, the U.S. Office of Foreign Assets Control within the Department of Treasury placed him on the Specially Designated Nationals list in 2004. The designation prohibits any transactions between BOUT and U.S. nationals, and freezes any of his assets that are within the jurisdiction of the United States.

Between November 2007 and March 2008, BOUT agreed to sell millions of dollars’ worth of weapons to the FARC, including 700–800 surface-to-air missiles (“SAMs”), over 20,000 AK-47 firearms, 10 million rounds of ammunition, five tons of C-4 plastic explosives, “ultralight” airplanes outfitted with grenade launchers, and unmanned aerial vehicles. BOUT agreed to sell the weapons to two confidential sources working with the DEA (the “CSs”), who represented that they were acquiring them for the FARC, with the specific understanding that the weapons were to be used to attack U.S. helicopters in Colombia.

....

BOUT was arrested in Thailand in March 2008 based on a Complaint filed in Manhattan federal court. He was subsequently charged in a four-count Indictment in April 2008 and extradited to the Southern District of New York in November 2010. At trial, he was convicted of (1) conspiring to kill U.S. nationals; (2) conspiring to kill U.S. officers and employees; (3) conspiring to acquire and export anti-aircraft missiles; and (4) conspiring to provide material support to a designated foreign terrorist organization.⁸

Liberian Removed from United States for Human Rights Abuses

In late March 2012, George Boley, the former leader of the Liberian Peace Council, was removed from the United States for recruiting child soldiers and other human rights violations during Liberia’s internal conflicts in the 1990s. Boley, who did not contest his removal, was flown to Liberia.⁹ He is the first person removed from the United States pursuant to the

⁶ Noah Rosenberg, *Weapons Dealer Is Spared a Life Term*, N.Y. TIMES, Apr. 6, 2012, at A18.

⁷ Michael Schwartz, *Russia Says Case Strains Ties to U.S.*, N.Y. TIMES, Apr. 7, 2012, at A5.

⁸ U.S. Atty’s Office (S.D.N.Y.) Press Release No. 12-099, International Arms Dealer Viktor Bout Sentenced in Manhattan Federal Court to 25 Years in Prison for Terrorism Crimes (Apr. 5, 2012), at <http://www.justice.gov/usao/nys/pressreleases/April12/boutviktorsentencingpr.pdf>.

⁹ Gary Craig, *Boley Deported to Liberia*, DEMOCRAT AND CHRONICLE (Rochester), Mar. 31, 2012, at B1.

Child Soldiers Accountability Act of 2008.¹⁰ An excerpt from a February 2012 Immigration and Customs Enforcement (ICE) press release regarding Boley follows:

An immigration judge in Batavia, N.Y. earlier today ordered removed from the United States the former leader of the Liberian Peace Council (LPC) for his role in human rights abuses committed during the Liberian civil war in the 1990s. . . .

George Saigbe Boley, 62, of Hilton, N.Y., the leader of LPC during the Liberian civil war, was found by an immigration judge to be removable from the United States. Boley's case represents the first removal order obtained by ICE under the authorities of the Child Soldiers Accountability Act of 2008, which added the recruitment and use of child soldiers as a ground of inadmissibility to and deportability from the United States. The immigration judge also found Boley inadmissible based upon the government's charge of commission of extrajudicial killings in Liberia in the 1990s and that Boley had abandoned his lawful permanent resident status.

. . . .

Various organizations have reported that the LPC engaged in serious human rights abuses against the civilian population. The 1995 United States Department of State report on Human Rights Practices in Liberia documented credible reports that Boley authorized the extrajudicial executions of seven of his soldiers on Nov. 14, 1995. According to witnesses who testified before Liberia's Truth and Reconciliation Commission (TRC) in 1994, the LPC burned dozens of captives and village inhabitants accused of witchcraft activities in a Liberian village. Other TRC witnesses also testified that in 1995, the LPC massacred 27 inhabitants in an attack on a village—ordering them to lie down before they slit their throats with cutlasses and raping the women before they killed them.

. . . .

[ICE's] [Human Rights Violators and War Crimes Center] investigates human rights violators, including those who have participated in war crimes and acts of genocide, torture, extrajudicial killings, and the recruitment and use of child soldiers, who try to evade justice by seeking shelter in the United States. These individuals may assume fraudulent identities to enter the country, seeking to blend into communities inside the United States. . . .

[Homeland Security Investigations] has more than 200 active investigations and is pursuing over 1,900 leads and removal cases involving suspects from approximately 95 different countries. These cases are predominantly focused on Central and South America, Haiti, the former Yugoslavia and Africa. They represent cases in various stages of investigation, prosecution or removal proceedings.¹¹

Department of Justice Announces Antitrust Cooperation Initiatives in International Competition Network

The International Competition Network (ICN) brings together antitrust agencies from 108 jurisdictions “to increase understanding of competition policy and promote convergence

¹⁰ 18 U.S.C. §2442.

¹¹ ICE Press Release, Immigration Judge Orders Liberian Human Rights Violator Removed Based on His Use of Child Soldiers, First Time ICE Has Used the Recruitment and Use of Child Soldiers Charge (Feb. 6, 2012), at <http://www.ice.gov/news/releases/1202/120206washingtondc.htm>.

toward best practices around the world.”¹² In April 2012, the U.S. Department of Justice announced three ICN initiatives aimed at enhancing international cooperation in antitrust matters. These initiatives deal with cooperation in international competition enforcement, in the investigative process, and with the courts and judges. According to the department’s announcement,

The International Competition Network (ICN) launched and approved three new initiatives on international enforcement cooperation, the investigative process in competition cases and working with the courts, the Department of Justice announced today. The ICN also adopted new materials on unilateral conduct investigations, raising anti-cartel awareness and explaining the benefits of competition.

The 11th annual ICN conference, hosted by the Brazilian Competition Policy System, was held on April 18–20, 2012, in Rio de Janeiro. More than 450 delegates participated, representing more than 80 antitrust agencies from around the world, and included competition experts from international organizations and the legal, business, consumer and academic communities. . . .

“The ICN has become a central forum for dialogue within the global antitrust community to share experiences and develop practical recommendations,” said Acting Assistant Attorney General Pozen. “Its work is enabling more effective and efficient antitrust enforcement worldwide, to the benefit of competition agencies and, ultimately, consumers.”¹³

State Department Receives New TransCanada Pipeline Permit Application

In May 2012, the U.S. Department of State announced that it had received a new application from TransCanada Corporation to construct a pipeline crossing the international border between the United States and Canada. The pipeline has become a source of political controversy in the United States. The Department of State rejected an earlier application because of insufficient time to conduct mandatory environmental and other reviews within a short period prescribed by Congress.¹⁴ The Department’s announcement of the new application follows:

The State Department has received a new application from TransCanada Corp. for a proposed pipeline that would run from the Canadian border to connect to an existing pipeline in Steele City, Nebraska. The new application includes proposed new routes through the state of Nebraska. The Department is committed to conducting a rigorous, transparent and thorough review.

Under Executive Order 13337, it is the Department’s responsibility to determine if granting a permit for the proposed pipeline is in the national interest. We will consider this new application on its merits. Consistent with the Executive Order, this involves consideration of many factors, including energy security, health, environmental, cultural, economic, and foreign policy concerns.

¹² U.S. Dep’t of Justice Press Release No. 12-509, International Competition Network Launches New Initiatives on Enforcement Cooperation, Investigative Process and Working with the Courts (Apr. 20, 2012), at <http://www.justice.gov/opa/pr/2012/April/12-at-509.html>.

¹³ *Id.*

¹⁴ Juliet Eilperin, *TransCanada Prepared to Reapply for Oil Pipeline Permit*, WASH. POST, May 4, 2012, at A3; Dan Frosch, *New Application Is Submitted for Keystone Pipeline*, N.Y. TIMES, May 5, 2012, at A13.

We will begin by hiring an independent third-party contractor to assist the Department, including reviewing the existing Environmental Impact Statement (EIS) from the prior Keystone XL pipeline review process, as well as identifying and assisting with new analysis.

We will cooperate with the state of Nebraska, as well as other relevant State and Federal agencies, throughout the process. Nebraska has stated that their own review of the new route will take six to nine months. Previously when we announced review of alternate routes through Nebraska this past fall, our best estimate on when we would complete the national interest determination was the first quarter of 2013.

We will conduct our review efficiently, using existing analysis as appropriate.

The application will be available on the Keystone XL project website: www.keystone-pipeline-xl.state.gov, and a notice that the Department has received the application will run in the Federal Register.¹⁵

United States Supports Creation of New Organization to Support Voluntary Principles on Security and Human Rights in Extractive Industries

In late March 2012, the U.S. Department of State issued a statement applauding establishment of a new nonprofit organization in the Netherlands to support the activities of the “Voluntary Principles on Security and Human Rights.” The Voluntary Principles combine governments and major international oil, mining, and gas companies in efforts to support and strengthen efforts to prevent human rights abuses.¹⁶ The statement follows:

Over the last 12 years, governments, major multinational corporations, and non-governmental organizations have worked together to make sure that when companies extract resources in some of the most difficult places on earth, they take tangible steps to minimize the risk of human rights abuses in the surrounding communities.

On March 27–28, 2012, in Ottawa, the Government of Canada hosted the annual meeting of the Voluntary Principles on Security and Human Rights, an initiative that provides human rights guidance to oil, mining, and gas companies in their engagement with public and private security providers. During the meeting, participants approved the creation of a formal non-profit organization for the initiative, based in The Hague, Netherlands. Along with the approval of governance rules in 2011, this transforms the Voluntary Principles from an ad hoc collaboration to a stable, structured initiative as it starts its second decade. This is a key step in cementing the relationship between governments, industry, and civil society in finding solutions to human rights problems that none could solve alone.

The Voluntary Principles initiative consists of 20 oil, mining, and gas companies; seven governments; and 10 non-governmental organizations (NGOs). In Ottawa, the Voluntary Principles welcomed the French oil and gas giant Total, S.A., as a new participant, and the International Finance Corporation and Democratic Control of Armed Forces, as observers. Participants discussed best practices and challenges on human rights and security issues, and strategies for engaging the governments of other countries where oil, gas, and mining companies are headquartered or operate. During the meeting, 13 participating

¹⁵ U.S. Dep’t of State Press Release No. 2012/708, New Pipeline Application Received from TransCanada (May 4, 2012), at <http://www.state.gov/r/pa/prs/ps/2012/05/189300.htm>.

¹⁶ John R. Crook, Contemporary Practice of the United States, 106 AJIL 138, 156 (2012).

companies led a conversation on the status of their pilot project to develop key performance indicators, which will guide and validate the ways that companies fulfill the commitments they make under the Voluntary Principles. These companies will integrate the indicators into their systems this year. This important step will help companies maintain high standards while they do business in these difficult areas of the world.¹⁷

U.S. Department of State Applauds Charles Taylor Conviction

Following conviction of Charles Taylor, former president of Liberia, by the Special Court for Sierra Leone in April 2012,¹⁸ the U.S. Department of State issued a statement noting the conviction's historical and legal significance and affirming continued U.S. support for the Special Court. The statement follows:

The United States welcomes the issuance of the judgment by the Special Court for Sierra Leone, convicting Charles Taylor, the former president of Liberia, of war crimes and crimes against humanity. Today's judgment was an important step toward delivering justice and accountability for victims, restoring peace and stability in the country and the region, and completing the Special Court for Sierra Leone's mandate to prosecute those persons who bear the greatest responsibility for the atrocities committed in Sierra Leone. The Taylor prosecution at the Special Court delivers a strong message to all perpetrators of atrocities, including those in the highest positions of power, that they will be held accountable.

The trial of Charles Taylor is of enormous historical and legal significance as it is the first of a powerful head of state to be brought to judgment before an international tribunal on charges of mass atrocities and serious violations of international humanitarian law. Over 90 witnesses testified during the trial, bringing to light the range of crimes committed during the war in Sierra Leone, and affirming the importance of justice for the victims. The United States has been a strong supporter and the leading donor of the Special Court for Sierra Leone since its inception.¹⁹ The successful completion of the Special Court's work remains a top U.S. Government priority.²⁰

Convicted Lockerbie Bomber Dies in Libya

In May 2012, Abdel Basset Mohamed al-Megrahi died in Libya following a long illness.²¹ Megrahi was convicted by a Scottish court sitting in the Netherlands of 270 counts of murder in connection with the December 1988 bombing of Pan Am Flight 103. U.S. officials denounced Scottish authorities' decision in 2009 to release him on compassionate medical grounds.²²

¹⁷ U.S. Dep't of State Media Note No. 2012/492, *New Organization Will Strengthen Human Rights Protection Efforts in Extractive Industries* (Mar. 30, 2012), at <http://www.state.gov/r/pa/prs/ps/2012/03/187239.htm>.

¹⁸ Marlise Simons, *Liberian Ex-Leader Convicted for Role in Sierra Leone War Atrocities*, N.Y. TIMES, Apr. 27, 2012, at A6.

¹⁹ [Editor's note: see John R. Crook, *Contemporary Practice of the United States* 105 AJIL 122, 150 (2011).]

²⁰ U.S. Dep't of State Press Release No. 2012/643, *The Verdict in the Charles Taylor Trial at the Special Court for Sierra Leone* (Apr. 26, 2012), at <http://www.state.gov/r/pa/prs/ps/2012/04/188534.htm>.

²¹ David D. Kirkpatrick & Rod Nordland, *For Lockerbie Planner, Near Death, No Extradition*, N.Y. TIMES, Aug. 29, 2011, at A8; Thomas Erdbrink & Karla Adam, *Lockerbie Bomber Said Near Death*, WASH. POST, Aug. 30, 2011, at A8; Robert D. McFadden, *Abdel Basset Ali al-Megrahi, Lockerbie Bomber, Dies at 60*, N.Y. TIMES, May 21, 2012, at A22; John F. Burns, *Libyan's Death Brings Up Debate over His Release*, N.Y. TIMES, May 21, 2012, at A8.

²² John R. Crook, *Contemporary Practice of the United States*, 103 AJIL 741, 764 (2009); 104 AJIL 654, 678 (2010).

where the question is whether Congress or the Executive is “aggrandizing its power at the expense of another branch.”⁸

Justice Sonia Sotomayor, joined in part by Justice Stephen Breyer, wrote a separate concurring opinion calling for a more demanding analysis of the political question issue. Justice Samuel Alito’s separate concurrence saw the issue in the case as very narrow: “whether the statutory provision at issue infringes the power of the President to regulate the contents of a passport.”⁹ Justice Breyer dissented, believing that the Court of Appeals was correct in dismissing the case on political question grounds.¹⁰

Ninth Circuit Revisits Armenian Genocide Legislation en Banc, Finds Preemption

In another chapter in the saga¹ of a California statute intended to permit suits against European insurance companies by descendants of Armenian genocide victims, the U.S. Court of Appeals for the Ninth Circuit ruled in February 2012 that the statute intruded upon federal responsibility for foreign affairs and was constitutionally preempted.² Judge Susan Graber’s opinion for the court summarizes the background.

Section 354.4 of the California Code of Civil Procedure vests California courts with jurisdiction over certain insurance claims brought by “Armenian Genocide victim[s]” and extends the statute of limitations for such claims. Under that statute, individual Plaintiffs, including Vazken Movsesian, filed this class action against various insurers. One of the defendant insurance companies filed a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss the claims, arguing, among other things, that section 354.4 is preempted under the foreign affairs doctrine. *See* U.S. Const. art. VI, cl. 2 (Supremacy Clause) (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”). We hold that section 354.4 is preempted and, accordingly, reverse the district court’s contrary ruling.³

Excerpts from the court’s opinion follow:

The Constitution gives the federal government the exclusive authority to administer foreign affairs. . . .

Under the foreign affairs doctrine, state laws that intrude on this exclusively federal power are preempted. . . .

Foreign affairs preemption encompasses two related, but distinct, doctrines: conflict preemption and field preemption. *Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 418–20 (2003). Under conflict preemption, a state law must yield when it conflicts with an express federal foreign policy. *See id.* at 421 (“The exercise of the federal executive authority means that state law must give way where, as here, there is evidence of clear conflict between the

⁸ *Id.* at 1427–28 (citation omitted).

⁹ *Id.* at 1436 (Alito, J., concurring).

¹⁰ *Id.* at 1441 (Breyer, J., dissenting).

¹ John R. Crook, *Contemporary Practice of the United States*, 105 AJIL 333, 334 (2011).

² *Movsesian v. Victoria Versicherung AG*, 670 F.3d 1067, 1077 (9th Cir. 2012).

³ *Id.* at 1069–70.