BRIEFLY NOTED
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Judicial and Similar Proceedings

1. Western Sahara Campaign U.K. v. The Commissioners for HMRC and the Secretary of State for the Environment, Food and Rural Affairs (England and Wales High Court – October 19, 2015)
<http://www.bailii.org/ew/cases/EWHC/Admin/2015/2898.html>

On October 19, 2015, the U.K. High Court (Court) ruled that a suit brought by the Western Sahara Campaign UK (WSCUK or Campaign) against Her Majesty's Revenue and Customs (HMRC) and the Secretary of State for the Environment and Rural Affairs (DEFRA) regarding a trade agreement with Morocco should be heard by the Court of Justice of the European Union (CJEU). According to a statement by Leigh Day, the firm representing WSCUK, the Campaign "is an independent voluntary organisation founded in 1984 with the aim of supporting the recognition of the right of the Saharawi people of Western Sahara to self-determination and independence and to raise awareness of the unlawful occupation of Western Sahara." In 1975, the International Court of Justice issued an advisory opinion, finding that Western Sahara was not bound by legal or other ties to another state and that there was no legal title affecting sovereignty or ownership over the territory. The present case arose out of the importation of products "originating from or processed in Western Sahara" into the U.K. under an EU trade deal with Morocco, which the WSCUK claims is unlawful as "Moroccan territorial jurisdiction does not extend to the territory of Western Sahara or to the territorial sea adjacent to Western Sahara" and "[t]herefore, goods and products produced in Western Sahara should not to be treated as originating from Morocco for the purposes of preferential tariffs or any other benefits conferred upon Moroccan products by European Union." The Court noted that "[i]t is common ground that only the Court of Justice of the European Union (CJEU) has competence to determine the legality of the disputed EU measures" and "conclude[d] that there is an arguable case of a manifest error by the Commission in understanding and applying international law relevant to these agreements." The Court thus decided to refer the case to the CJEU, noting that "it is clear that the status of these agreements have been controversial" and stating that "[t]here would appear to be a strong public interest in ascertaining what the CJEU has to say on the question, thereby clarifying the limits of the Commission's broad powers in the sensitive arena of international relations." Additionally, "the fact that trade agreements are made that benefit the population of the occupied territory generally without regard to the fact that some of the population are said to be present in the territory as a result of the original unlawful act may be evidence of a serious breach of international law."

2. Al Tamimi v. Sultanate of Oman (International Centre for the Settlement of Investment Disputes – November 3, 2015)
<http://www.italaw.com/sites/default/files/case-documents/italaw4450.pdf>

On November 3, 2015, a tribunal constituted under the International Centre for the Settlement of Investment Disputes (ICSID) Convention dismissed all claims brought by a U.S. investor against the Sultanate of Oman. Mr. Al Tamimi, a U.S. citizen, had initiated the arbitration proceedings for alleged breach of provisions of the U.S.-Oman Free Trade Agreement (Agreement) regarding national treatment, expropriation, and minimum standard of treatment. Mr. Al Tamimi had invested in the development and operation of a limestone quarry, entering into contracts with the state-owned Oman Mining Company LLC (OMCO) for the lease of the site. According to the lease agreements, Mr. Al Tamimi's companies promised to "comply with all obligations imposed by the relevant permit, and agreed to indemnify OMCO '*at all times*' against any claims, demands and liability in respect thereof." After the mining operations had started, Mr. Al Tamimi's companies were issued a number of warnings and fines from Omani authorities for "unauthorised use of equipment, excavation of material from the wadi, operating outside of the boundary of the permit, and blasting outside of the concession area." OMCO eventually terminated the lease agreements, stating that Mr. Al Tamimi had not complied with his payment obligations, such as reimbursing OMCO for fines it had paid. These proceedings ultimately culminated in a "demobilization plan," requiring Mr. Al Tamimi's businesses to immediately cease operations and remove all equipment from the area. He subsequently initiated arbitration, arguing that OMCO's actions could be attributed to the state of Oman. The tribunal disagreed, finding that "there is no

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evidence that OMCO ever acted in the exercise of any regulatory, administrative or governmental authority delegated to it by the Omani State" and concluded that "[t]he fact that OMCO was a State-owned entity does not suffice." Rather, the lease agreements with Mr. Al Tamimi's companies were "simple commercial lease[s]," and in terminating them "OMCO did not seek to rely on any sovereign power to terminate the lease agreement[s], but only its express contractual rights" in a "commercial response to . . . alleged various and repeated breaches of contract."

3. In The Matter of The Law on Termination of Pregnancy in Northern Ireland (High Court of Justice in Northern Ireland – November 30, 2015)

<https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2015/%5B2015%5D%20NIQB%2096/j_j_HOR9740Final.htm>

On November 30, 2015, the High Court of Justice in Northern Ireland (Court) ruled that aspects of Northern Ireland's abortion laws are incompatible with the European Convention on Human Rights (Convention). Northern Ireland permits abortions only "in cases where a woman's life is threatened or where there is a permanent or serious risk to her well-being." The Court found that the current laws regarding abortion violate Article 8 (right to respect for private and family life) of the Convention, as they provide no provisions dealing with sexual abuse or incest resulting in pregnancy. The Court stated "that the current law places a disproportionate burden on the victim of sexual crime. She has to face all the dangers and problems, emotional or otherwise, of carrying a foetus for which she bears no moral responsibility but is merely a receptacle to carry the child of a rapist and/or a person who has committed incest, or both. . . . By imposing a blanket ban on abortion, reinforced with criminal sanctions, it effectively prevents any consideration of the interests of any woman whose personal autonomy in those circumstances has been so vilely and heinously invaded. A law so framed, can never be said to be proportionate." The Court further found that the laws on abortion violated Article 8 of the Convention due to their ban on abortions in cases of fatal fetal abnormalities, noting that in those cases "there is no life to protect. When the foetus leaves the womb, it cannot survive independently. It is doomed. There is nothing to weigh in the balance. There is no human life to protect."

4. OBB Personenverkehr AG v. Sachs (U.S. Supreme Court – December 1, 2015)

<http://www.supremecourt.gov/opinions/15pdf/13-1067_onkq.pdf>

On December 1, 2015, the U.S. Supreme Court decided in *OBB Personenverkehr AG v. Sachs* that a California resident could not recover against the state-owned Austrian railway under the commercial activity exception to the Foreign Sovereign Immunities Act (FSIA). Carol Sachs, a California resident, had purchased tickets for a train journey in Europe online from a travel agency based in Massachusetts. At a train station in Austria, she had taken a fall on the platform and been seriously injured. Sachs argued that "her suit falls within the Act's commercial activity exception, which provides in part that a foreign state does not enjoy immunity when 'the action is based upon a commercial activity carried on in the United States by the foreign state.'" The Court disagreed, citing its test from an earlier decision and asking whether "an action is 'based upon' the 'particular conduct' that constitutes the 'gravamen' of the suit." It concluded that "the conduct constituting the gravamen of Sachs's suit plainly occurred abroad. All of her claims turn on the same tragic episode in Austria, allegedly caused by wrongful conduct and dangerous conditions in Austria, which led to injuries suffered in Austria." The Court concluded that "the 'essentials' of her suit for purposes of [the commercial activity exception] are found in Austria" and the commercial transaction, a "single element" of her claim, was not enough to meet the requirements of the exception.

5. Zakharov v. Russia (European Court of Human Rights – December 4, 2015)

<http://hudoc.echr.coe.int/eng-press?i=001-159324>

On December 4, 2015, the European Court of Human Rights ruled in *Zakharov v. Russia* that the system for secret surveillance of mobile phones in Russia violated Article 8 (right to respect for private life and correspondence) of the European Convention of Human Rights (Convention). Roman Zakharov, a Russian national and subscriber of several mobile service providers, filed for an injunction in a Russian court, arguing

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that "pursuant [to a not generally accessible regulation] the mobile network operators had installed equipment which permitted the Federal Security Service . . . to intercept all telephone communications without prior judicial authorization." The court denied his request, finding that he had not provided proof that his communications had in fact been intercepted and ruling that "[i]nstallation of the equipment to which he referred did not in itself infringe the privacy of his communications." The Court ruled that the legal framework for surveillance measures did not contain "adequate and effective guarantees against arbitrariness and the risk of abuse." Specifically, the Court found the legislation lacked clarity regarding the categories of people and types of offenses which are subject to surveillance, as well as clear provisions on duration and termination of the measures and procedures for storage and disposal of the collected data. Additionally, the Court ruled that any remedies to challenge surveillance measures were undermined by the difficulties in obtaining proof that they had actually taken place. The Court also addressed the procedures for authorizing surveillance, noting that "Russian courts do not verify whether there is a reasonable suspicion" and "sometimes . . . authorise interception of all telephone communications in the area where a criminal offence has allegedly been committed, and on occasions without mentioning the duration of the authorised interception." It concluded that "[t]he need for safeguards against arbitrariness and abuse appears therefore to be particularly great" as the Russian system "allows the secret services and the police to intercept directly the communications of each and every citizen without having to show an interception authorisation to the communications service provider." Finally, the Court decided that the supervision of surveillance measures did not conform with "requirements under the European Convention that supervisory bodies be independent, open to public scrutiny and vested with sufficient powers and competence to exercise effective and continuous control."

RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. **Somalia Ratification of Convention on the Rights of the Child (October 1, 2015)**
<https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en#EndDec>

On October 1, 2015, Somalia ratified the Convention on the Rights of the Child, depositing its ratification instrument at the United Nations headquarters during the annual treaty event. Somalia became "the 196th State party to the most widely ratified human rights treaty in history." The Convention was adopted in 1989 and protects the human rights of children, including "the right to life, to health, to education and to play, as well as the right to family life, to be protected from violence and from any form of discrimination, and to have their views heard." The Secretary-General welcomed Somalia's ratification and encouraged the United States "to join the global movement and help the world reach the objective of universal ratification."

2. **Termination of Emergency with Respect to the Actions and Policies of Former Liberian President Charles Taylor (U.S. Executive Order – November 12, 2015)**
<https://www.whitehouse.gov/the-press-office/2015/11/12/executive-order-termination-emergency-respect-actions-and-policies>

On November 12, 2015, President Obama published an Executive Order terminating the sanctions against Liberia. The sanctions had been put in place in 2004 and "imposed asset freezes on former Liberian President Charles Taylor, people belonging to his immediate family, his close associates or officials of his former regime, those who have been involved in the unlawful depletion of Liberian resources, and entities owned or controlled by designated persons." According to the Executive Order, the president decided to lift the sanctions because Liberia had made significant progress towards promoting democracy, held free presidential elections, and affirmed the fifty-year prison sentence for former President Taylor.

3. **Proposal for an International Investment Court (European Union – November 12, 2015)**
<http://trade.ec.europa.eu/doclib/docs/2015/november/tradoc_153955.pdf>

On November 12, 2015, the European Union (EU) published its proposal for investment protection and a court system under the Transatlantic Trade and Investment Partnership Agreement (TTIP), which would replace

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the existing investor-state dispute settlement (ISDS) mechanism in TTIP and all future agreements. The proposal incorporates all "key elements" of the Commission's draft, and "aims at safeguarding the right to regulate and create a court-like system with an appeal mechanism based on clearly defined rules, with qualified judges and transparent proceedings" as well as improving access to the system for small and medium-sized companies. EU Trade Commissioner Celia Malmström stated, "This approach will allow the EU to take a global role on the path of reform, to create an international court based on public trust."

4. General Notice of Freezing Order (U.K. Treasury – January 21, 2016)
<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/494330/Notice_re_UK_freezing_orders_regime_january_2016.pdf>

On January 21, 2016, the U.K. announced sanctions against two men thought to be the killers of Alexander Litvinenko, a former KGB officer and critic of the Russian government. Litvinenko died in London in 2006 from radiation poisoning. An official report produced for the British parliament concluded that there is a "strong probability" that the murder was ordered by the Russian security service FSB and "probably approved" by Russian President Putin. The British Treasury's notice imposes asset freezes against the two men, which will be added to already existing sanction in the Litvinenko matter such as "expulsion of four Russian embassy officials, tighter visa controls on diplomatic staff, and limited cooperation with the FSB."

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