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# UNITED NATIONS JURIDICAL YEARBOOK

2004

Part Three. Judicial decisions on questions relating to the United Nations and related  
intergovernmental organizations

Chapter VII. Decisions and advisory opinions of international tribunals



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## Chapter VII

### DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

#### A. INTERNATIONAL COURT OF JUSTICE<sup>1</sup>

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established in June 1945 by the Charter of the United Nations and began work in April 1946.

##### 1. Judgments

- (i) *Avena and other Mexican Nationals (Mexico v. United States of America)*, 31 March 2004.
- (ii) *Legality of Use of Force (Serbia and Montenegro v. Belgium)*, 15 December 2004.
- (iii) *Legality of Use of Force (Serbia and Montenegro v. Canada)*, 15 December 2004.
- (iv) *Legality of Use of Force (Serbia and Montenegro v. France)*, 15 December 2004.
- (v) *Legality of Use of Force (Serbia and Montenegro v. Germany)*, 15 December 2004.
- (vi) *Legality of Use of Force (Serbia and Montenegro v. Italy)*, 15 December 2004.
- (vii) *Legality of Use of Force (Serbia and Montenegro v. Netherlands)*, 15 December 2004.
- (viii) *Legality of Use of Force (Serbia and Montenegro v. Portugal)*, 15 December 2004.
- (ix) *Legality of Use of Force (Serbia and Montenegro v. United Kingdom)*, 15 December 2004.

##### 2. Advisory Opinions

On 9 July 2004, the Court delivered its advisory opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, following a request by the General Assembly in its resolution ES-10/14, adopted on 8 December 2003.

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<sup>1</sup> The texts of the judgments, advisory opinions and orders are published in the *I.C.J. Reports*. Summaries of the judgments, advisory opinions and orders of the Court are provided in English and French on its website at [www.icj-cij.org](http://www.icj-cij.org). In addition, extracts of these summaries are contained in *Summaries, Advisory Opinions and Orders of the International Court of Justice* (United Nations Publication, ST/LEG/SER.F/1 and Add.1 and 2), which is published in the six official languages of the United Nations. The summaries of the decisions listed above will appear in the third addendum to this publication covering the period from 2003 to 2007. See also chapter III A, section 18 above.

### 3. Pending cases as at 31 December 2004

- (i) *Maritime Delimitation in the Black Sea (Romania v. Ukraine)* (2004- ).
- (ii) *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia v. Singapore)* (2003- ).
- (iii) *Certain Criminal Proceedings in France (Republic of the Congo v. France)* (2003- ).
- (iv) *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)* (2002- ).
- (v) *Frontier Dispute (Benin v. Niger)* (2002- ).
- (vi) *Territorial and Maritime Dispute (Nicaragua v. Colombia)* (2001- ).
- (vii) *Certain Property (Liechtenstein v. Germany)* (2001- ).
- (viii) *Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)* (1999- ).
- (ix) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia and Montenegro)* (1999- ).
- (x) *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* (1999- ).
- (xi) *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* (1998- ).
- (xii) *Gabčíkovo-Nagymaros (Hungary v. Slovakia)* (1993- ).
- (xiii) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (1993- ).

## B. INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA<sup>2</sup>

The International Tribunal for the Law of the Sea is an independent permanent tribunal established by the United Nations Convention on the Law of the Sea, 1982.<sup>3</sup> The Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea, signed by the Secretary-General of the United Nations and the President of the Tribunal on 18 December 1997, establishes a mechanism for cooperation between the two institutions.<sup>4</sup>

### 1. Judgments

*Case No. 13 – The “Juno Trader” Case (Saint Vincent and the Grenadines v. Guinea-Bissau), Prompt Release*, 18 December 2004.

<sup>2</sup> The texts of the 2004 judgments and orders are published in the *Reports of Judgments, Advisory Opinions and Orders/Recueil des arrêts, avis consultatifs et ordonnances, Volume 8 (2004)*, Martinus Nijhoff Publishers, 2005, and are also provided in English and French on the Tribunal's website at [www.itlos.org](http://www.itlos.org). For more information about the Tribunal's activities, see the Annual report of the International Tribunal for the Law of the Sea for 2004 (SPLOS/122).

<sup>3</sup> United Nations, *Treaty Series*, vol. 1833, p. 3.

<sup>4</sup> United Nations, *Treaty Series*, vol. 2000, p. 468.

## 2. Pending cases as at 31 December 2004

*Case No. 7 – Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile v. European Community) (2000-).*

### C. INTERNATIONAL CRIMINAL COURT<sup>5</sup>

The International Criminal Court (ICC) is an independent permanent court established by the Rome Statute of the International Criminal Court, 1998.<sup>6</sup> The Relationship Agreement between the United Nations and the International Criminal Court, signed by the Secretary-General of the United Nations and the President of the Court on 4 October 2004, establishes a mechanism for cooperation between the two institutions.<sup>7</sup>

#### (i) *Situation in the Democratic Republic of the Congo ICC-01/04*

In March 2004, the President of the Democratic Republic of the Congo (DRC) referred to the Prosecutor the situation of crimes allegedly committed in the territory of the DRC since the entry into force of the Rome Statute, on 1 July 2002. Subsequently, in June 2004, the Prosecutor announced the opening of the first investigation of the ICC concerning this situation.

#### (ii) *Situation in Uganda ICC-02/04*

In July 2004, the Prosecutor announced the opening of an investigation into the situation concerning Northern Uganda, following the referral of the situation by Uganda in December 2003.

### D. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA<sup>8</sup>

The International Criminal Tribunal for the former Yugoslavia is a subsidiary body of the United Nations Security Council. The Tribunal was established by Security Council resolution 827 (1993), adopted on 25 May 1993.<sup>9</sup>

<sup>5</sup> For more information about the Court's activities, see the Report of the International Criminal Court for 2004 (A/60/177). See also the Court's website at [www.icc-cpi.int/](http://www.icc-cpi.int/).

<sup>6</sup> United Nations, *Treaty Series*, vol. 2187, p. 3.

<sup>7</sup> See chapter II A, section 3 above and United Nations, *Treaty Series*, vol. 2283, p. 195.

<sup>8</sup> The texts of the indictments, decisions and judgements are published in the *Judicial Reports / Recueils judiciaires* of the International Criminal Tribunal for the former Yugoslavia for each given year. The texts are also available in English and French on the Tribunal's website at [www.un.org/icty/index.html](http://www.un.org/icty/index.html). For more information about the Tribunal's activities, see Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (A/59/215-S/2004/627 and A/60/267-S/2005/532). See also chapter IIIA, section 19 above.

<sup>9</sup> The Statute of the Tribunal is annexed to the report of the Secretary-General pursuant to Security Council resolution 808 (1993) (S/25704 and Add.1).

## 1. Judgements delivered by the Appeals Chamber

- (i) *Prosecutor v. Mitar Vasiljević*, Case No. IT-98-32-T, Judgement, 25 February 2004.
- (ii) *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Judgement, 19 April 2004.
- (iii) *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-T, Judgement, 29 July 2004.
- (iv) *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-T, Judgement, 17 December 2004.

## 2. Judgements delivered by the Trial Chambers

- (i) *Prosecutor v. Ranko Češić*, Case No. IT-95-10/1, Sentencing Judgement, 11 March 2004.
- (ii) *Prosecutor v. Miodrag Jokić*, Case No. IT-01-42/1, Sentencing Judgement, 18 March 2004.
- (iii) *Prosecutor v. Darko Mrđa*, Case No. IT-02-59, Sentencing Judgement, 31 March 2004.
- (iv) *Prosecutor v. Miroslav Deronjić*, Case No. IT-02-61, Sentencing Judgement, 30 March 2004.
- (v) *Prosecutor v. Milan Babic*, Case No. IT-03-72, Sentencing Judgement, 29 June 2004.
- (vi) *Prosecutor v. Radoslav Brđjanin*, Case No. IT-99-36, Judgement, 1 September 2004.

## E. INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA<sup>10</sup>

The International Criminal Tribunal for Rwanda is a subsidiary body of the United Nations Security Council. The Tribunal was established by Security Council resolution 955 (1994), adopted on 8 November 1994.<sup>11</sup>

## 1. Judgements delivered by the Appeals Chamber

- (i) *Prosecutor v. Eliézer Niyitegeka*, Case No. ICTR-96-14-T, Judgement, 9 July 2004.

<sup>10</sup> The texts of the orders, decisions and judgements are published in the *Recueil des Ordonnances, Décisions et Arrêts/Reports of Orders, Decisions and Judgements* for the International Criminal Tribunal for Rwanda. The texts are also available in English and French in the Tribunals Judicial Records Database at [www.icttr.org](http://www.icttr.org). For more information about the Tribunal's activities, see the annual report to the General Assembly and the Security Council: Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (A/59/183-S/2004/601 and A/60/229-S/2005/534). See also chapter IIIA, section 19 above.

<sup>11</sup> The Statute of the Tribunal is contained in the annex to the resolution.

- (ii) *Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case No. ICTR-96-10:2; ICTR-96-17, Judgement, 13 December 2004.

## 2. Judgements delivered by the Trial Chambers

- (i) *Prosecutor v. Jean de Dieu Kamuhanda*, Case No. ICTR-99-54, Judgement, 22 January 2004.
- (ii) *Prosecutor v. André Ntagerura, Samuel Imanishimwe and Emmanuel Bagambiki (the Cyangugu case)*, Case No. ICTR-97-36; ICTR-99-46T, ICTR-96-10A, Judgement and Sentence, 25 February 2004.
- (iii) *Prosecutor v. Sylvestre Gacumbitsi*, Case No. ICTR-01-64, Judgement, 17 June 2004.
- (iv) *Prosecutor v. Emmanuel Ndindabahizi*, Case No. ICTR-01-71-I, Judgement and Sentence, 15 July 2004.

## F. SPECIAL COURT FOR SIERRA LEONE<sup>12</sup>

The Special Court for Sierra Leone is an independent court established by the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone.<sup>13</sup>

### 1. Judgements

No judgements were delivered by the Trial Chambers or the Appeals Chamber in 2004.

### 2. Decisions of the Appeals Chamber

The Appeals Chamber issued the following decisions on jurisdictional and other matters relating to the competence of the Court or the nature of the proceedings:

- (i) *Prosecutor v. Sam Hinga Norman*, Case No. SCSL-2004-14-AR72(E), Decision on preliminary motion based on lack of jurisdiction: Judicial independence, 13 March 2004.
- (ii) *Prosecutor v. Sam Hinga Norman, Morris Kallon, and Brima Bazzy Kamara*, Case No. SCSL-2004-14-AR72(E), SCSL-2004-15-AR72(E), SCSL-2004-16-AR72(E), Decision on constitutionality and lack of jurisdiction, 13 March 2004.
- (iii) *Prosecutor v. Issa Hassan Sesay*, Case No. SCSL-2004-15-AR15, Decision on defence motion seeking the disqualification of Justice Robertson from the Appeals Chamber, 13 March 2004.

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<sup>12</sup> The texts of the judgements and decisions are available on the Court's website at [www.sc-sl.org](http://www.sc-sl.org). For more information on the Court's activities, see the Second Annual Report of the President of the Special Court, covering the period from January 2004 to January 2005.

<sup>13</sup> For the text of the Agreement and the Statute of the Special Court, see United Nations, *Treaty Series*, vol. 2178, p. 137.

- (iv) *Prosecutor v. Morris Kallon and Brima Bazzy Kamara*, Case No. SCSL-2004-15-AR72(E), SCSL-2004-16-AR72(E), Decision on challenge to jurisdiction: Lomé Accord Amnesty, 13 March 2004.
- (v) *Prosecutor v. Augustine Gbao*, Case No. SCSL-2004-15-PT, Decision on appeal by the Truth and Reconciliation Commission (TRC) and accused against the decision of Judge Bankole Thompson delivered on 3 November 2003 to deny the TRC's request to hold a public hearing with Augustine Gbao, 7 May 2004.
- (vi) *Prosecutor v. Augustine Gbao*, Case No. SCSL-2003-09-PT, Decision on preliminary motion on the invalidity of the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court, 25 May 2004.
- (vii) *Prosecutor v. Allieu Kondewa*, Case No. SCSL-2004-14-AR72(E), Decision on lack of jurisdiction / abuse of process: Amnesty provided by the Lomé Accord, 25 May 2004.
- (viii) *Prosecutor v. Moinina Fofana*, Case No. SCSL-2004-14-AR72(E), Decision on preliminary motion on lack of jurisdiction: Nature of the armed conflict, 25 May 2004.
- (ix) *Prosecutor v. Moinina Fofana*, Case No. SCSL-2004-14-AR72(E), Decision on preliminary motion on lack of jurisdiction: Illegal delegation of jurisdiction by Sierra Leone, 25 May 2004.
- (x) *Prosecutor v. Moinina Fofana*, Case No. SCSL-2004-14-AR72(E), Decision on preliminary motion on lack of jurisdiction *materiae*: Illegal delegation of powers by the United Nations, 25 May 2004.
- (xi) *Prosecutor v. Santigie Borbor Kanu*, Case No. SCSL-2004-16-AR72(E), Decision on motion challenging jurisdiction and raising objections based on abuse of process, 25 May 2004.
- (xii) *Prosecutor v. Sam Hinga Norman*, Case No. SCSL-2004-14, Decision on the motion to recuse Judge Winter from the deliberation in the preliminary motion on the recruitment of child soldiers, 28 May 2004.
- (xiii) *Prosecutor v. Sam Hinga Norman*, Case No. SCSL-2004-14-AR72(E), Decision on preliminary motion based on lack of jurisdiction (child recruitment), 31 May 2004.
- (xiv) *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-2003-01-PT, Decision on immunity from jurisdiction, 31 May 2004.
- (xv) *Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao*, Case No. SCSL-2004-15-T, Sesay, Decision on application to withdraw motion seeking the disqualification of Justice Robertson from all judicial functions regarding the RUF, 15 October 2004.