

*Extract from:*

# UNITED NATIONS JURIDICAL YEARBOOK

2008

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

Chapter VII. Decisions and advisory opinions of international tribunals



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CONTENTS

	<i>Page</i>
(c) Interoffice memorandum regarding Government clearance of UNIDO experts sent on mission to a Member State . . . . .	464
(d) Interoffice memorandum regarding residency status . . . . .	465
<b>Part Three. Judicial decisions on questions relating to the United Nations and related intergovernmental organizations</b>	
<b>CHAPTER VII. DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS</b>	
<b>A. INTERNATIONAL COURT OF JUSTICE</b>	
1. Judgments . . . . .	469
2. Advisory Opinions . . . . .	469
3. Pending cases as at 31 December 2008 . . . . .	469
<b>B. INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA</b>	
1. Judgments . . . . .	470
2. Pending cases as at 31 December 2008 . . . . .	471
<b>C. INTERNATIONAL CRIMINAL COURT</b>	
(a) Situation in the Democratic Republic of the Congo ICC-01/04 . .	471
(b) Situation in Uganda ICC-02/04 . . . . .	472
(c) Situation in the Central African Republic ICC-01/05 . . . . .	472
(d) Situation in Darfur, the Sudan . . . . .	472
<b>D. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA</b>	
1. Judgments delivered by the Appeals Chamber . . . . .	472
2. Judgments delivered by the Trial Chambers . . . . .	473
<b>E. INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA</b>	
1. Judgments delivered by the Appeals Chambers . . . . .	473
2. Judgments delivered by the Trial Chambers . . . . .	474
<b>F. SPECIAL COURT FOR SIERRA LEONE</b>	
1. Judgments delivered by the Appeals Chamber . . . . .	474
2. Judgments delivered by the Trial Chambers . . . . .	474
3. Selected decisions of the Appeals Chamber . . . . .	474
4. Selected decisions of the Trial Chambers . . . . .	475
<b>G. EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA . . . . .</b>	
<b>H. SPECIAL TRIBUNAL FOR LEBANON . . . . .</b>	
	475

**Part Three**

**JUDICIAL DECISIONS ON QUESTIONS RELATING TO THE  
UNITED NATIONS AND RELATED  
INTERGOVERNMENTAL ORGANIZATIONS**

## Chapter VII

### DECISIONS AND ADVISORY OPINIONS OF INTERNATIONAL TRIBUNALS

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

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

##### 1. Judgments

- (i) *Sovereignty over Pedra Branca/Palau Batu Puteh, Middle Rock and South Ledge (Malaysia/Singapore)*, Judgment, 23 May 2008.
- (ii) *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, Judgment, 4 June 2008.
- (iii) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Preliminary Objections, Judgment, 18 November 2008.

##### 2. Advisory Opinions

No advisory opinions were delivered by the International Court of Justice in 2008.

##### 3. Pending cases as at 31 December 2008

- (i) *Jurisdictional Immunities of the State (Germany v. Italy)* (2008 - ).
- (ii) *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)* (2008 - ).

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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, the summaries can also be found in *Summaries of Judgments, 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 fourth addendum to this publication covering the period from 2008 to 2012, and are also available on the website <http://www.un.org/law/ICJsummaries/>.

- (iii) *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Governance of Kosovo* (Request for Advisory Opinion) (2008 - ).
- (iv) *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russia)* (2008 - ).
- (v) *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and other Mexican Nationals (Mexico v. the United States of America)* (2008 - ).
- (vi) *Aerial Herbicide Spraying (Ecuador v. Colombia)* (2008 - ).
- (vii) *Maritime Dispute (Peru v. Chile)* (2008 - ).
- (viii) *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* (2006- ).
- (ix) *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)* (2005- ).
- (x) *Maritime Delimitation in the Black Sea (Romania v. Ukraine)* (2004- ).
- (xi) *Certain Criminal Proceedings in France (Republic of the Congo v. France)* (2003- ).
- (xii) *Territorial and Maritime dispute (Nicaragua v. Colombia)* (2001- ).
- (xiii) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)* (1999- ).
- (xiv) *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* (1999- ).
- (xv) *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* (1998- ).
- (xvi) *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)* (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,<sup>4</sup> 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.

### 1. Judgments

No judgments were delivered by the International Tribunal for the Law of the Sea in 2008.

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<sup>2</sup> For more information about the Tribunal's activities, including relating to orders rendered in 2008, see the Annual report of the International Tribunal for the Law of the Sea for 2008 (ISBN 978-90-04-17065-0) and the Tribunal's website at [www.itlos.org](http://www.itlos.org).

<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 2008

*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> As at 31 December 2008, in accordance with the Statute and the Rules of Procedure and Evidence, the Prosecutor had opened investigations into four situations.

As of 2008, three States Parties to the Rome Statute - Uganda, the Democratic Republic of the Congo and the Central African Republic - had referred situations occurring on their territories to the Court. In addition, the Security Council had referred the situation in Darfur, the Sudan - a non-State Party. After a thorough analysis of available information, the Prosecutor had opened and is conducting investigations in all of the above-mentioned situations.

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

*The Prosecutor v. Thomas Lubanga Dyilo (ICC-01/04-01/06)*

- (i) *Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008*, Trial Chamber I, 13 June 2008.
- (ii) *Decision on the release of Thomas Lubanga Dyilo*, Trial Chamber I, 2 July 2008.
- (iii) *Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I entitled “Decision on the release of Thomas Lubanga Dyilo”*, Appeals Chamber, 21 October 2008.
- (iv) *Decision to lift the stay of proceedings in the case of Thomas Lubanga Dyilo (oral decision)*, Trial Chamber I, 18 November 2008.

*The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui (ICC-ICC-01/04-01/07)*

On 7 February 2008, Mathieu Ngudjolo Chui was surrendered to the Court by the Democratic Republic of Congo pursuant to a sealed warrant of arrest issued by Pre-Trial Chamber I in 2007.

- (i) *Decision on the Joinder of the Cases against Germain Katanga and Mathieu Ngudjolo Chui*, Pre-Trial Chamber I, 10 March 2008.

<sup>5</sup> For more information about the Court’s activities, see Report of the International Criminal Court (A/63/323 and A/64/356). 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.

- (ii) Decision on the confirmation of charges, Pre-Trial Chamber I, 30 September 2008.

*The Prosecutor v. Bosco Ntaganda (ICC-01/04-02/06)*

On 28 April 2008, Pre-Trial Chamber I decided to unseal the warrant of arrest, delivered on 22 August 2006 under seal, against Bosco Ntaganda.

**(b) Situation in Uganda ICC-02/04**

No indictment or decision on substantive matters was issued by the Court in 2008.

**(c) Situation in the Central African Republic ICC-01/05**

*The Prosecutor v. Jean-Pierre Bemba Gombo (ICC-01/05 -01/08)*

*Decision to Unseal the Warrant of Arrest for Mr Jean-Pierre Bemba Gombo*, Pre-Trial Chamber III, 24 May 2008.

**(d) Situation in Darfur, the Sudan**

*The Prosecutor v. Omar Hassan Ahmad Al Bashir ICC-02/05-01/09*

On 14 July 2008, the Prosecutor submitted an application for the issuance of a warrant of arrest against the Sudanese president Omar Al Bashir. On 9 December 2008, Pre-Trial Chamber I issued a decision requesting the Office of the Prosecutor to submit, no later 26 January 2009, additional information and supporting materials in relation to the Prosecution's request for a warrant of arrest for three rebel commanders.

**D. INTERNATIONAL CRIMINAL TRIBUNAL FOR  
THE FORMER YUGOSLAVIA<sup>7</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 of 25 May 1993.<sup>8</sup>

**1. Judgments delivered by the Appeals Chamber**

<sup>7</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/63/210-S/2008/515 and A/64/205-S/2009/394).

<sup>8</sup> The Statute of the Tribunal is annexed to the report of the Secretary-General pursuant to Security Council resolution 808 of 22 February 1993 (S/25704 and Add.1).

- (i) *Prosecutor v. Hadžihasanović & Kubura*, Case No. IT-01-47-A, Judgement, 22 April 2008.
- (ii) *Prosecutor v. Naser Orić*, Case No. 03-68-A, Judgement, 3 July 2008.
- (iii) *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-A, Judgement, 17 July 2008.
- (iv) *Prosecutor v. Milan Martić*, Case No. IT-95-11-A, Judgement, 8 October 2008.

## 2. Judgments delivered by the Trial Chambers

- (i) *Prosecutor v. Ramush Haradinaj et. al.*, Case No IT-04-84, Judgement, 3 April 2008.
- (ii) *Prosecutor v. Ljube Bošković and Johan Tarčulovski*, Case No. 04-82-T, Judgement, 10 July 2008.
- (iii) *Prosecutor v. Baton Haxhiu*, Case No. IT-04-84-R77.5, Judgement on Allegations of Contempt, 24 July 2008.
- (iv) *Prosecutor v. Astrit Haraqija and Bajrush Morina*, Case No. IT-04-84-R77.4, Judgment on Allegations of Contempt, 17 December 2008.

## E. INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA<sup>9</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>10</sup>

### 1. Judgments delivered by the Appeals Chambers

- (i) *Prosecutor v. Athanase Seromba*, Case No. ICTR-2001-66-A, Judgement, 12 March 2008.
- (ii) *Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-2000-55A-A, Judgement, 29 August 2008.

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<sup>9</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* of the International Criminal Tribunal for Rwanda. The texts are also available in English and French in the Tribunal's Judicial Records Database at <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/63/209-S/2008/514 and A/64/206-S/2009/306).

<sup>10</sup> The Statute of the Tribunal is contained in the annex to the resolution.



## 2. Judgments delivered by the Trial Chambers

- (i) *Prosecutor v. Siméon Nchamihigo*, Case No. ICTR-01-63-T, Judgement, 12 November 2008.
- (ii) *Prosecutor v. Simon Bikindi*, Case No. ICTR-01-72-T, Judgement, 2 December 2008.
- (iii) *Prosecutor v. Protais Zigiranyirazo*, Case No. ICTR-01-73-T, Judgement, 18 December 2008.
- (iv) *Prosecutor v. Théoneste Bagosora et. al.*, Case No. ICTR-98-41-T, Judgement, 18 December 2008.

## F. SPECIAL COURT FOR SIERRA LEONE<sup>11</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>12</sup>

### 1. Judgments delivered by the Appeals Chamber

- (i) *Prosecutor v. Alex Tamba Brima et. al.* (Armed Forces Revolutionary Council (AFRC) Case), Case No. SCSL-2004-16-A, Judgment, 22 February 2008.
- (ii) *Prosecutor v. Moinina Fofana and Allieu Kondewa* (Civil Defence Forces (CDF) Case), Case No. SCSL-04-14-A, Judgment, 28 May 2008.

### 2. Judgments delivered by the Trial Chambers

No judgments were delivered by the Trial Chambers of the Special Court for Sierra Leone in 2008.

### 3. Selected decisions of the Appeals Chamber<sup>13</sup>

There were no decisions of the Appeals Chamber pertaining to jurisdictional and other matters relating to the competence of the Court in 2008.

<sup>11</sup> The texts of the judgments and decisions are available on the Court's website at <http://www.sc-sl.org>. For more information on the Court's activities, see the Fourth Annual Report of the President of the Special Court, covering the period from January 2006 to May 2007, and the Fifth Annual Report of the President of the Special Court, covering the period from June 2007 to May 2008.

<sup>12</sup> For the text of the Agreement and the Statute of the Special Court, see United Nations, *Treaty Series*, vol. 2178, p. 137.

<sup>13</sup> Selected decisions of the Appeals Chamber which are related to questions of law of a substantive or procedural nature are covered in this section.

#### 4. Selected decisions of the Trial Chambers<sup>14</sup>

There were no decisions taken by the Trial Chambers pursuant to rule 98 of the Rules of Procedure and Evidence of the Special Court (motion of judgment of acquittal) in 2008.

#### G. EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA<sup>15</sup>

The Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the period of Democratic Kampuchea, signed in Phnom Penh on 6 June 2003,<sup>16</sup> entered into force on 29 April 2005 and established the Extraordinary Chambers in the Courts of Cambodia to prosecute the crimes committed during the period of Democratic Kampuchea.

No judgment was issued by the Trial Chamber or Supreme Court Chamber in 2008. However, the Co-Investigating Judges issued a closing order indicting Kaing Guek Eav, *alias* Duch, on 8 August 2008. The Co-Investigating Judges further issued orders extending the provisional detention of Nuon Chea, Ieng Sary, Ieng Thirith and Kieu Samphan.<sup>17</sup> In addition, the Pre-Trial Chamber delivered on 26 August its *Decision on Nuon Chea Appeal against Order Refusing Request for Annulment*, and on 5 December 2008 the *Pre-Trial Chamber Decision on Appeal against Closing Order Indicting Kaing Guek Eav alias "Duch"*.

#### H. SPECIAL TRIBUNAL FOR LEBANON<sup>18</sup>

In 2007, the Special Tribunal for Lebanon was established pursuant the Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon, dated 22 January and 6 February 2007, and the resolution of the Security Council 1757 (2007) of 30 May 2007.

No decisions or judgments were delivered by the Special Tribunal in 2008.

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<sup>14</sup> Only decisions of the Trial Chamber made pursuant to rule 98 of the Rules of Procedure and Evidence of the Special Court (Motions of judgment of acquittal) in 2008 are covered in this section.

<sup>15</sup> The texts of the judgments and decisions are available on the Court's website at <http://www.eccc.gov.kh/>.

<sup>16</sup> United Nations, *Treaty Series*, vol. 2328.

<sup>17</sup> On 16 September 2008, 10 November 2008, 10 November and 18 November 2008, respectively.

<sup>18</sup> For more information about the Special Tribunal, see the Second, Third and Fourth reports of the Secretary-General submitted pursuant to Security Council resolution 1757 (S/2008/173, S/2008/734 and S/2009/106, respectively).