

*Extract from:*

# UNITED NATIONS JURIDICAL YEARBOOK

2015

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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## 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 work in April 1946.

##### 1. Judgments

- (a) *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua); Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, 16 December 2015.
- (b) *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)*, Order, Removal from List, 11 June 2015.
- (c) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, 3 February 2015.

##### 2. Advisory Opinions

No advisory opinions were delivered by the International Court of Justice in 2015.

##### 3. Pending cases and proceedings as at 31 December 2015

- (a) *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)* (2014–).
- (b) *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)* (2014–).

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<sup>1</sup> The texts of the judgments, advisory opinions and orders are published in the ICJ Reports. Summaries of judgments, advisory opinions and orders of the Court are provided in English and French on its website <http://www.icj-cij.org>. In addition, the summaries can be found in all six official languages of the United Nations on the website of the Codification Division of the United Nations Office of Legal Affairs, <http://legal.un.org/icjsummaries/>. For more information about the Court's activities, see Report of the International Court of Justice, *Official Records of the General Assembly, Seventieth Session, Supplement No. 4 (A/70/4)* and Seventieth-first Session, Supplement No. 4 (A./71/4), for the periods of 1 August 2014 to 31 July 2015 and 1 August 2015 to 31 July 2016, respectively.

- (c) *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. Pakistan)* (2014–).
- (d) *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)* (2014–).
- (e) *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* (2014–).
- (f) *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)* (2013–).
- (g) *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia)* (2013–).
- (h) *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)* (2013–).
- (i) *Certain Activities carried out by Nicaragua in Border Area (Costa Rica v. Nicaragua)* (2010–).
- (j) *Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)* (1999–).
- (k) *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 and Orders

- (a) *Case No. 24—The “Enrica Lexie” Incident (Italy v. India)*, Order, Request for the prescription of provisional measures, 24 August 2015.
- (b) *Case No. 23—Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire)* (2014–), Order, Request for the prescription of provisional measures, 25 April 2015.
- (c) *Case No. 21—Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*, Advisory Opinion, 2 April 2015.

<sup>2</sup> For more information about the Tribunal’s activities, including relating to orders and judgments rendered in 2015, see the Annual report of the International Tribunal for the Law of the Sea for 2015 (SPLOS/294) and the Tribunal’s website at <http://www.itlos.org>.

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

<sup>4</sup> *Ibid.*, vol. 2000, p. 468.

## 2. Pending cases and proceedings as at 31 December 2015

- (a) *Case No. 25—The M/V “Norstar” Case (Panama v. Italy)* (2015–).
- (b) *Case No. 24—The “Enrica Lexie” Incident (Italy v. India)* (2015–).
- (c) *Case No. 23—Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d’Ivoire in the Atlantic Ocean (Ghana/Côte d’Ivoire)* (2014–).

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

The International Criminal Court 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, outlines the relationship between the two institutions.<sup>7</sup>

In 2015, the following situations were under investigation by the Office of the Prosecutor: Uganda,<sup>8</sup> Democratic Republic of the Congo,<sup>9</sup> Central African Republic,<sup>10</sup> Darfur (the Sudan),<sup>11</sup> Kenya,<sup>12</sup> Libya,<sup>13</sup> Côte d’Ivoire,<sup>14</sup> Mali,<sup>15</sup> and Central African Republic II.<sup>16</sup>

Additionally, in 2015 the Office of the Prosecutor opened a preliminary examination of the situation in the State of Palestine and continued its preliminary examinations in Afghanistan, Colombia, Guinea, Iraq, Nigeria, and Ukraine. It concluded its preliminary examinations in Georgia, requesting authorization to open an investigation, and Honduras, in which case it decided not to proceed with an investigation.

<sup>5</sup> For more information about the Court’s activities, see Report of the International Criminal Court, for the period 1 August 2014 to 31 July 2015 (A/70/350) and the period 1 August 2015 to 31 July 2016 (A/71/342), as well as the Court’s website at <http://www.icc-cpi.int>.

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

<sup>7</sup> *Ibid.*, vol. 2283, p. 195.

<sup>8</sup> The situation was referred to the Court by Uganda in January 2004.

<sup>9</sup> The situation was referred to the Court by the Democratic Republic of the Congo in April 2004.

<sup>10</sup> The situation was referred to the Court by the Central African Republic in December 2004. The referral pertains to crimes within the jurisdiction of the Court committed anywhere on the territory of the Central African Republic since 1 July 2002.

<sup>11</sup> On 31 March 2005, the Security Council referred the situation in Darfur, the Sudan, to the Prosecutor of the Court by Security Council resolution 1593 (2005), adopted on 31 March 2005.

<sup>12</sup> On 31 March 2010, Pre-Trial Chamber II granted the Prosecutor’s request to open an investigation *proprio motu* into the situation in Kenya.

<sup>13</sup> On 26 February 2011, the Security Council referred the situation in Libya to the Prosecutor of the Court by Security Council resolution 1970 (2011), adopted on 26 February 2011.

<sup>14</sup> On 3 October 2011, Pre-Trial Chamber III granted the Prosecutor’s request to open an investigation *proprio motu* into the situation in Côte d’Ivoire.

<sup>15</sup> The situation was referred to the Court by Mali in July 2012.

<sup>16</sup> The situation was referred to the Court by the Central African Republic in May 2014. The referral pertains to crimes allegedly committed on the Central African Republic territory since 1 August 2012.

On 16 July 2015, following a request for review presented by the Government of the Union of the Comoros, Pre-Trial Chamber I requested the Prosecutor to reconsider her decision, dated 6 November 2014, to close the preliminary examination regarding the situation on Registered Vessels of Comoros, Greece and Cambodia, due to the lack of a reasonable basis to proceed with an investigation.<sup>17</sup> On 6 November 2015, the Appeals Chamber of the International Criminal Court (ICC) decided by majority to dismiss, *in limine* and without discussing its merits, the Prosecutor's appeal against the decision of Pre-Trial Chamber I requesting the Prosecutor to reconsider the decision.<sup>18</sup>

## **1. Situations and cases before the Court as at 31 December 2015**

### **(a) Situation in Uganda**

#### *Pending case and proceeding*

- (a) *The Prosecutor v. Joseph Kony and Vincent Otti*, Case No. ICC-02/04-01/05.
- (b) *The Prosecutor v. Dominic Ongwen*, Case No. ICC-02/04-01/15.

### **(b) Situation in the Democratic Republic of the Congo**

#### *(i) Judgments delivered by the Appeals Chamber*

*The Prosecutor v. Mathieu Ngudjolo Chui*, Case No. ICC-01/04-02/12, Judgment on the Prosecutor's appeal against the decision of Trial Chamber II entitled "Judgment pursuant to article 74 of the Statute", 27 February 2015.

#### *(ii) Pending cases and proceedings*

- (a) *The Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06.
- (b) *The Prosecutor v. Bosco Ntaganda*, Case No. ICC-01/04-02/06.
- (c) *The Prosecutor v. Germain Katanga*, Case No. ICC-01/04-01/07.
- (d) *The Prosecutor v. Sylvestre Mudacumura*, Case No. ICC-01/04-01/12.

### **(c) Situation in Darfur, the Sudan**

#### *Pending cases and proceedings*

- (a) *The Prosecutor v. Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, Case No. ICC-02/05-01/07.

<sup>17</sup> *Situation on Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia*, Pre-Trial Chamber I, Decision on the request of the Union of the Comoros to review the Prosecutor's decision not to initiate an investigation, 16 July 2015, No. ICC-01/13-34.

<sup>18</sup> *Situation on Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia*, Appeals Chamber, Decision on the admissibility of the Prosecutor's appeal against the "Decision on the request of the Union of the Comoros to review the Prosecutor's decision not to initiate an investigation", 6 November 2015, No. ICC-01/13 OA.

- (b) *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Case No. ICC-02/05-01/09.
- (c) *The Prosecutor v. Abdallah Banda Abakaer Nourain*, Case No. ICC-02/05-03/09.
- (d) *The Prosecutor v. Abdel Raheem Muhammad Hussein*, Case No. ICC-02/05-01/12.

**(d) Situation in the Central African Republic**

*Pending cases and proceedings*

- (a) *The Prosecutor v. Jean-Pierre Bemba Gombo*, Case No. ICC-01/05-01/08.
- (b) *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, Case No. ICC-01/05-01/13.

**(e) Situation in Kenya**

*Pending cases and proceedings*

- (a) *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Case No. ICC-01/09-01/11.
- (b) *The Prosecutor v. Walter Osapiri Barasa*, Case No. ICC-01/09-01/13.
- (c) *The Prosecutor v. Paul Gicheru and Philip Kipkoech Bett*, Case No. ICC-01/09-01/15.

**(f) Situation in Libya**

*Pending case and proceeding*

*The Prosecutor v. Saif Al-Islam Gaddafi*, Case No. ICC-01/11-01/11.

**(g) Situation in Côte d'Ivoire**

**(i) Judgment delivered by the Appeals Chamber**

*The Prosecutor v. Simone Gbagbo*, Case No. ICC-02/11-01/12, Judgment on the appeal of Côte d'Ivoire against the decision of Pre-Trial Chamber I of 11 December 2014 entitled "Decision on Côte d'Ivoire's challenge to the admissibility of the case against Simone Gbagbo", 27 May 2015.

**(ii) Pending cases and proceedings<sup>19</sup>**

- (a) *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Case No. ICC-02/11-01/15.
- (b) *The Prosecutor v. Simone Gbagbo*, Case No. ICC-02/11-01/12.

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<sup>19</sup> On 11 March 2015, Trial Chamber I joined the Gbagbo case (ICC-02/11-01/11) and the Blé Goudé case (ICC-02/11-02/11).



**(h) Situation in Mali**

*The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Case No. ICC-01/12-01/15.

**D. INTERNATIONAL CRIMINAL TRIBUNAL FOR  
THE FORMER YUGOSLAVIA<sup>20</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>21</sup>

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

- (a) *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-05-88/2-A, Judgement, 9 December 2015.
- (b) *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-A, Judgement, 8 April 2015.
- (c) *Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Radivoje Miletić and Vinko Pandurević*, Case No. IT IT-05-88-A, Judgement, 30 January 2015.

**2. Judgements delivered by the Trial Chambers**

No judgements were delivered by the Trial Chambers of the International Criminal Tribunal for the former Yugoslavia in 2015.

**3. Pending cases and proceedings as at 31 December 2015**

- (a) *Prosecutor v. Goran Hadžić*, Case No. IT-04-75 (2004–).
- (b) *Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Čorić and Berislav Pusić*, Case No. IT-04-74 (2004–).
- (c) *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67 (2003–).
- (d) *Prosecutor v. Mićo Stanišić and Stojan Župljanin*, Case No. IT-08-91 (1999–).
- (e) *Prosecutor v. Ratko Mladić*, Case No. IT-09-92 (1995–).
- (f) *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18 (1995–).

<sup>20</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. The texts are also available in English and French on the Tribunal's website at <http://www.icty.org>. For more information about the Tribunal's activities, see the Twenty-second and Twenty-third annual reports 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, for the periods from 1 August 2014 to 31 July 2015 (A/70/226–S/2015/585) and from 1 August 2015 to 31 July 2016 (A/71/263–S/2016/670), respectively.

<sup>21</sup> The Statute of the Tribunal is annexed to the report of the Secretary-General pursuant to Security Council resolution 808 (1993) of 22 February 1993 (S/25704 and Add.1).

## E. INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA<sup>22</sup>

The International Criminal Tribunal for Rwanda was a subsidiary body of the United Nations Security Council, established by Security Council resolution 955 (1994), adopted on 8 November 1994.<sup>23</sup> The Tribunal closed on 31 December 2015.<sup>24</sup> In line with Security Council resolution 1966 (2010), the International Residual Mechanism for Criminal Tribunals continued its jurisdiction, rights and obligations and essential functions.

### Judgements delivered by the Appeals Chamber

*The Prosecutor v. Pauline Nyiramasuhuko, Arsène Shalom Ntahobali, Sylvain Nsabimana, Alphonse Nteziryayo, Joseph Kanyabashi, and Élie Ndayambaje*, Case No. ICTR-98-42-A, Judgement, 14 December 2015.

## F. MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS<sup>25</sup>

The Mechanism for International Criminal Tribunals was established in 2010 by Security Council resolution 1966 (2010), adopted on 22 December 2010.<sup>26</sup> The Mechanism was created to carry out certain residual functions of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, including trial and appellate proceedings, the supervision and enforcement of sentences, and tracking the remaining fugitives.

No judgements were delivered by the Mechanism for International Criminal Tribunals in 2015.

### Pending cases and proceedings as at 31 December 2015

*Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. MICT-15-96 (2015–).

<sup>22</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 website at <https://www.unict.org>. For more information about the Tribunal's activities, see, for the period 1 July 2014 to 30 June 2015, the Twentieth annual 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/70/218–S/2015/557).

<sup>23</sup> The Statute of the Tribunal is in the annex to the resolution.

<sup>24</sup> See Report on the completion of the mandate of the International Criminal Tribunal for Rwanda as at 15 November 2015 (S/2015/884).

<sup>25</sup> The texts of the orders, decisions and judgements are available on the Mechanism's website at <http://www.unmict.org>. For more information about the Mechanism's activities, see the Third and Fourth annual reports of the International Residual Mechanism for Criminal Tribunals, for the period 1 July 2014 to 30 June 2015 (A/70/225–S/2015/586) and 1 July 2015 to 30 June 2016 (A/71/262–S/2016/669), respectively.

<sup>26</sup> The Statute of the Mechanism is contained in the annex to the resolution.

## G. EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA<sup>27</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>28</sup> entered into force on 29 April 2005 and established the Extraordinary Chambers in the Courts of Cambodia to prosecute crimes committed during the period of Democratic Kampuchea.

No judgements were delivered by the Extraordinary Chambers in the Courts of Cambodia in 2015.

### Pending cases and proceedings as at 31 December 2015

- (a) *Khieu Samphân and Nuon Chea*, Case No. 002/01 (2010–).
- (b) *Khieu Samphân and Nuon Chea*, Case No. 002/01 (2010–).
- (c) *Meas Muth*, Case No. 003 (2009–).
- (d) *Ao An, Yim Tith and Im Chaem*, Case No. 004 (2009–).

## H. SPECIAL TRIBUNAL FOR LEBANON<sup>29</sup>

The Special Tribunal for Lebanon was established in 2007 pursuant to 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,<sup>30</sup> and to the Security Council resolution 1757 (2007) adopted on 30 May 2007 to prosecute persons responsible for the attack of 14 February 2005 resulting in the death of former Lebanese Prime Minister Rafiq Hariri and in the death or injury of other persons.

### 1. Judgements delivered by the Contempt Judge

*Al Jadeed [CO.] S.A.L./NEW T.V. S.A.L. (N.T.V.) and Ms Karma Mohamed Tahsin Al Khayat*, Case No. STL-14-05/T/CJ, Judgment, 18 September 2015.

<sup>27</sup> The texts of the judgements, decisions and orders of the Extraordinary Chambers in the Courts of Cambodia are available on its website at <http://www.eccc.gov.kh>. For more information on the Court's activities, see the Report of the Secretary-General on the Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia of 30 September 2015 (A/70/403).

<sup>28</sup> United Nations, *Treaty Series*, vol. 2329, p. 117.

<sup>29</sup> The texts of the indictments, decisions and orders of the Special Tribunal for Lebanon are available on the Tribunal's website at <http://www.stl-tsl.org>. For more information on the Tribunal's activities, see the Sixth and Seventh Annual Reports of the Special Tribunal for Lebanon, for the periods 1 March 2014 to 28 February 2015 and 1 March 2015 to 29 February 2016, respectively, available from <https://www.stl-tsl.org/en/documents/president-s-reports-and-memoranda>.

<sup>30</sup> United Nations, *Treaty Series*, vol. 2461, p. 257.

## 2. Pending cases and proceedings as at 31 December 2015

- (a) *Salim Jamil Ayyash, Mustafa Amine Badreddine, Hassan Habib Merhi, Hussein Hassan Oneissi and Assad Hassan Sabra*, Case No. STL-11-01 (2011–).
- (b) *Al Jadeed [CO.] S.A.L./NEW TV S.A.L. and Karma Mohamed Tahsin Al Khayat*, Case No. STL-14-05 (2014–).
- (c) *Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, Case No. STL-14-06 (2014–).

### I. RESIDUAL SPECIAL COURT FOR SIERRA LEONE<sup>31</sup>

The Special Court for Sierra Leone<sup>32</sup> was 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, 2002.<sup>33</sup> The Special Court was mandated to try those who bore the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.

As the Special Court completed its mandate and finished its judicial activities in 2013, the Residual Special Court for Sierra Leone superseded the Special Court. The Residual Special Court was established pursuant to an Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Residual Special Court for Sierra Leone,<sup>34</sup> signed in 2010 and entered into force in 2012.

The purpose of the Residual Special Court is to carry out the continuing obligations of the Special Court after its closure in 2013, such as witness protection, supervision of prison sentences, and management of the Special Court's archives. Johnny Paul Koroma is the only indicted person by the Special Court who is not in custody. Should he be arrested, the Residual Special Court will have jurisdiction to try him.

No judgments were delivered by the Residual Special Court for Sierra Leone in 2015.

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<sup>31</sup> The texts of the decisions delivered by the Residual Special Court for Sierra Leone are available at the Residual Special Court's website at <http://www.rscsl.org>.

<sup>32</sup> The texts of the judgements and decisions delivered by the Special Court for Sierra Leone are available at the Residual Special Court's website at <http://www.rscsl.org>. For more information on the Court's activities, see the Eleventh and Final Report of the President of the Special Court for Sierra Leone, available from <http://www.rscsl.org/Documents/AnRpt11.pdf>.

<sup>33</sup> For the text of the Agreement and the Statute of the Special Court dated 26 January 2002, see United Nations, *Treaty Series*, vol. 2178, p. 137.

<sup>34</sup> The Agreement and the Statute of the Residual Special Court were registered with the United Nations under No. 50125 (see also S/2012/741).