

*Extract from:*

# UNITED NATIONS JURIDICAL YEARBOOK

2009

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 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) *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) (Mexico v. the United States of America)*, Judgment, 19 January 2009.
- (ii) *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, 3 February 2009.
- (iii) *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgment, 13 July 2009.

##### 2. Advisory Opinions

No advisory opinions were delivered by the International Court of Justice in 2009.

##### 3. Pending cases as at 31 December 2009

- (i) *Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium v. Switzerland)* (2009—).
- (ii) *Certain Questions concerning Diplomatic Relations (Honduras v. Brazil)* (2009—).
- (iii) *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* (2009—).
- (iv) *Jurisdictional Immunities of the State (Germany v. Italy)* (2008—).

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<sup>1</sup> The texts of the judgments, advisory opinions and orders are published in the *ICJ Reports*. Summaries of the 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://www.un.org/law/ICJsummaries>.

- (v) *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)* (2008—).
- (vi) *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Governance of Kosovo (Request for Advisory Opinion)* (2008—).
- (vii) *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russia)* (2008—).
- (viii) *Aerial Herbicide Spraying (Ecuador v. Colombia)* (2008—)
- (ix) *Maritime Dispute (Peru v. Chile)* (2008—).
- (x) *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* (2006- ).
- (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 Tribunal in 2009. On 16 December 2009, the Tribunal ordered the discontinuance of the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Union)*, and ordered its removal from the list of cases.

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<sup>2</sup> For more information about the Tribunal's activities, including relating to orders rendered in 2009, see the Annual report of the International Tribunal for the Law of the Sea for 2009 (forthcoming at the time of publication) 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> *Ibid.*, vol. 2000, p. 468.

## 2. Pending cases as at 31 December 2009

*Case No. 16—Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar) (2009- )*

### 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 Negotiated Relationship Agreement between the International Criminal Court and the United Nations<sup>7</sup> outlines the relationship between the two institutions.

As of 2009, 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. On 5 November 2009, the Prosecutor informed the Court of his intention to submit a request for the authorization of an investigation into the situation in the Republic of Kenya.

#### 1. Situations under investigation in 2009

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

The trial in the cases *The Prosecutor v. Thomas Lubanga Dyilo* (ICC-01/04-01/06) and *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* (ICC-01/04-01/07) began on 26 January and 24 November 2009, respectively.

##### (b) Situation in the Central African Republic (ICC-01/05)

On 15 June 2009, Pre-Trial Chamber II issued a decision on the confirmation of the charges in the case *The Prosecutor v. Jean-Pierre Bemba Gombo* (ICC-01/05 -01/08).

##### (c) Situation in Uganda

The four suspects in the case *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* remained at large throughout 2009.

<sup>5</sup> For more information about the Court's activities, see Report of the International Criminal Court, for the period 1 August 2008 to 31 July 2009 (A/64/356). At the time of publication, the report covering the period 1 August 2009 to 31 July 2010 was forthcoming. 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 ICC-ASP/3/Res.1. Entered into force on 22 July 2004.

### (d) The situation in Darfur, Sudan

The suspects in the case *The Prosecutor v. Ahmad Muhammad Harun* (“Ahmad Harun”) and *Ali Muhammad Ali Abd-Al-Rahman* (“Ali Kushayb”) (ICC-02/05–01/07) remained at large throughout 2009.

On 4 March 2009, Pre-Trial Chamber I issued a warrant of arrest in the case *The Prosecutor v. Omar Hassan Ahmad Al Bashir* (ICC-02/05–01/09). The suspect remained at large throughout 2009.

On 27 August 2009, Pre-Trial Chamber I issued summonses to appear under seal in the case *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* (ICC-02/05–03/09).

A confirmation hearing was held between 19 and 29 October 2009 in the case *The Prosecutor v. Bahar Idriss Abu Garda* (ICC-02/05–02/09).

### (e) The situation in Kenya

On 6 November 2009, the Presidency of the Court decided to assign the situation to Pre-Trial Chamber II. On 26 November 2009, the Prosecutor filed a request for authorization of an investigation into the situation in Kenya pursuant to article 15, paragraph 3, of the Rome Statute.

## 2. Judgments

No judgments were delivered by the Trial Chambers or Appeals Chamber in 2009.

### D. INTERNATIONAL 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 of 25 May 1993.<sup>9</sup>

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

- (i) *Prosecutor v. Momčilo Krajišnik*, Case No. IT-00–39-A, Judgement, 17 March 2009.

<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.icty.org](http://www.icty.org). For more information about the Tribunal’s activities, see, for the period 1 August 2008 to 31 July 2009, 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/64/205-S/2009/394). At the time of publication, the report covering the period 1 August 2009 to 31 July 2010 was forthcoming.

<sup>9</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).

- (ii) *Prosecutor v. Mile Mrkšić and Veselin Šljivančanin*, Case No. IT-95-13/1-A, Judgement, 5 May 2009.
- (iii) *Prosecutor v. Dragan Jokić*, Case No. IT-05-88-R77.1-A, Judgement on Allegations of Contempt, 25 June 2009.
- (iv) *Prosecutor v. Astrit Haragija and Bajrush Morina*, Case No. IT-04-84-R77.4-A, Judgement (on allegations of contempt), 23 July 2009.
- (v) *Prosecutor v. Dragomir Milošević*, Case No. IT-98-29/1-A, Judgement, 12 November 2009.

## 2. Judgements delivered by the Trial Chambers

- (i) *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Judgement, 26 February 2009.
- (ii) *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-T, Judgement, 20 July 2009.
- (iii) *Prosecutor v. Vojilav Šešelj*, Case No. IT-03-67-R77.2, Judgement on Allegations of Contempt, 24 July 2009.
- (iv) *Prosecutor v. Florence Hartmann*, Case No. IT-02-54-R77.5, Judgement on Allegations of Contempt, 14 September 2009.

## 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) *François Karera v. the Prosecutor*, Case No. ICTR-01-74-A, Judgement, 2 February 2009.
- (ii) *Protais Zigiranyirazo v. the Prosecutor*, Case No. ICTR-01-73-A, Judgement, 16 November 2009.

<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* 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. For the period 1 July 2008 to 30 June 2009, see 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/64/206-S/2009/306). At the time of publication, the report covering the period 1 July 2009 to 30 June 2010 was forthcoming.

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



## 2. Judgements delivered by the Trial Chambers

- (i) *The Prosecutor v. Emmanuel Rukundo*, Case No. ICTR-2001-70-T, Judgement, 27 February 2009.
- (ii) *The Prosecutor v. Callixte Kalimanzira*, Case No. ICTR-05-88-T, Judgement, 22 June 2009.
- (iii) *The Prosecutor v. Léonidas Nshogoza*, Case No. ICTR-07-91-T, Judgement (on allegations of contempt), 7 July 2009.
- (iv) *The Prosecutor v. Tharcisse Renzaho*, Case No. ICTR-97-31-T, Judgement and Sentence, 14 July 2009.
- (v) *The Prosecutor v. Michel Bagaragaza*, Case No. ICTR-05-86-S, Sentencing Judgement, 17 November 2009.
- (vi) *The Prosecutor v. Hormisdas Nsengimana*, Case No. ICTR-01-69-T, Judgement, 17 November 2009.

## 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 delivered by the Appeals Chamber

- (i) *The Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao* (Revolutionary United Front (RUF) case), Case No. SCSL-04-15-A, Judgment, 26 October 2009.

### 2. Judgements delivered by the Trial Chambers

- (i) *The Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao* (Revolutionary United Front (RUF) case), Case No. SCSL-04-15-T, Judgement, 25 February 2009.
- (ii) *The Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao* (Revolutionary United Front (RUF) case), Case No. SCSL-04-15-T, Sentencing Judgement, 8 April 2009.

<sup>12</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, for the period June 2008 to May 2009, the Sixth Annual Report of the President of the Special Court, covering the period from June 2008 to May 2009. At the time of publication, the Seventh Annual Report, covering the period June 2009 to May 2010, was forthcoming.

<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.

## G. EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA<sup>14</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>15</sup> entered into force the 29 April 2005 and established the Extraordinary Chambers in the Courts of Cambodia to prosecute the crimes committed during the period of Democratic Kampuchea.

In the case of *Kaing Guek Eav* alias *Duch* (Case File No. 001/18–07–2007/ECCC-TC), the initial hearing began on 17 February 2009, and the trial commenced on 30 March 2009.

No judgments were delivered by the Extraordinary Chambers in 2009.

## H. SPECIAL TRIBUNAL FOR LEBANON<sup>16</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, and Security Council resolution 1757 (2007) of 30 May 2007.

The Special Tribunal began functioning on 1 March 2009. The judges, meeting in plenary, subsequently adopted the Rules of Procedure and Evidence, the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal, and the Directive on Assignment of Defence Counsel, all of which entered into force on 20 March 2009. On 27 March 2009, the Pre-Trial Judge issued an order directing the Lebanese judicial authority seized with the case of the attack, *inter alia*, to defer to the Tribunal's competence in this case. On 10 April 2009, the Lebanese authorities referred to the Prosecutor the results of the investigation and a copy of the court's records regarding the Hariri case, at which date the Tribunal became seized of the case.

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<sup>14</sup> The texts of the decisions of the Extraordinary Chambers in the Courts of Cambodia are available on its website, <http://www.eccc.gov.kh/>.

<sup>15</sup> United Nations, *Treaty Series*, vol. 2328.

<sup>16</sup> For more information about the Special Tribunal, see the reports of the Secretary-General submitted pursuant to Security Council resolution 1757 (S/2009/106, respectively).