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UNITED NATIONS JURIDICAL YEARBOOK

2014

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 JUSTICE¹

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) *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, Judgment, 31 March 2014.
- (b) *Maritime Dispute (Peru v. Chile)*, Judgment, 27 January 2014.

2. Advisory Opinions

No advisory opinions were delivered by the International Court of Justice in 2014.

3. Pending cases and proceedings as at 31 December 2014

- (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–)*.
- (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–)*.

¹ 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, for the period of 1 August 2013 to 31 July 2014, Report of the International Court of Justice, Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 4 (A/69/4) and, for the period of 1 August 2014 to 31 July 2015, Report of the International Court of Justice, Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 4 (A/70/4).

- (e) *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* (2014–).
- (f) *Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)* (2013–).
- (g) *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)* (2013–).
- (h) *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia)* (2013–).
- (i) *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)* (2013–).
- (j) *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)* (2011–).
- (k) *Certain Activities carried out by Nicaragua in Border Area (Costa Rica v. Nicaragua)* (2010–).
- (l) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)* (1999–).
- (m) *Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)* (1999–).
- (n) *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)* (1993–).

B. INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA²

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, 1982.³ The Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea,⁴ 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

Case No. 19—The M/V “Virginia G” Case (Panama/Guinea-Bissau), Judgment, 14 April 2014.

² For more information about the Tribunal’s activities, including relating to orders and judgments rendered in 2014, see the Annual report of the International Tribunal for the Law of the Sea for 2014 (SPLOS/278) and the Tribunal’s website at <https://www.itlos.org>.

³ United Nations, *Treaty Series*, vol. 1833, p. 3.

⁴ *Ibid.*, vol. 2000, p. 468.

2. Pending cases and proceedings as at 31 December 2014

- (a) *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–)*.
- (b) *Case No. 21—Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC) (2013–)*.

C. INTERNATIONAL CRIMINAL COURT⁵

The International Criminal Court is an independent permanent court established by the Rome Statute of the International Criminal Court, 1998.⁶ 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.⁷

In 2014, the following situations were under investigation by the Office of the Prosecutor: Uganda,⁸ Democratic Republic of the Congo,⁹ Central African Republic,¹⁰ Darfur (the Sudan),¹¹ Kenya,¹² Libya,¹³ Côte d'Ivoire,¹⁴ Mali,¹⁵ and Central African Republic II.¹⁶

Additionally, in 2014 the Office of the Prosecutor conducted preliminary examinations in the situations in Afghanistan, Colombia, Comoros, Georgia, Guinea, Honduras, Iraq, Nigeria, Republic of Korea, and Ukraine. The situations of Comoros and in the Republic of Korea were closed in 2014 on the grounds that there was no reasonable basis to initiate an investigation.

⁵ For more information about the Court's activities see Reports of the International Criminal Court, for the period 1 August 2013 to 31 July 2014 (A/69/321) and for the period 1 August 2014 to 31 July 2015 (A/70/350). See also the Court's website at <http://www.icc-cpi.int>. See also chapter III, part B of this publication.

⁶ United Nations, *Treaty Series*, vol. 2187, p. 3.

⁷ *Ibid.*, vol. 2283, p. 195.

⁸ The situation was referred to the Court by Uganda in January 2004.

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

¹⁰ 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.

¹¹ 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.

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

¹³ On 26 February 2011, the Security Council referred the situation in Libya to the Prosecutor of the Court by Security Council resolution 1970 (2011).

¹⁴ 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.

¹⁵ The situation was referred to the Court by Mali in July 2012.

¹⁶ 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.

1. Situations and cases before the Court as at 31 December 2014

(a) Situation in Uganda

Pending case and proceeding

The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen, Case No. ICC-02/04-01/05.

(b) Situation in the Democratic Republic of the Congo

(i) *Judgment delivered by the Trial Chamber*

The Prosecutor v. Germain Katanga, Case No. ICC-01/04-01/07, Judgment, 7 March 2014.

(ii) *Judgments delivered by the Appeals Chamber*

- (a) *The Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, Judgment on the appeal of Mr. Thomas Lubanga Dyilo against his conviction, 1 December 2014.
- (b) *The Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, Judgment on the appeals of the Prosecutor and Mr. Thomas Lubanga Dyilo against the “Decision on Sentence pursuant to Article 76 of the Statute”, 1 December 2014.

(iii) *Pending cases and proceedings*

- (a) *The Prosecutor v. Mathieu Ngudjolo Chui*, Case No. ICC-01/04-02/12.
- (b) *The Prosecutor v. Bosco Ntaganda*, Case No. ICC-01/04-02/06.
- (c) *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.
- (b) *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Case No. ICC-02/05-01/09.
- (c) *The Prosecutor v. Bahar Idriss Abu Garda*, Case No. ICC-02/05-02/09.
- (d) *The Prosecutor v. Abdallah Banda Abakaer Nourain*, Case No. ICC-02/05-03/09.
- (e) *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*¹⁷

- (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.

(f) Situation in Libya

(i) *Judgment delivered by the Appeals Chamber*

The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi, Case No. ICC-01/11-01/11, Judgment on the appeal of Mr. Abdullah Al-Senussi against the decision of Pre-Trial Chamber I of 11 October 2013 entitled “Decision on the admissibility of the case against Abdullah Al-Senussi”, 24 July 2014.

(ii) *Pending case and proceeding*

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

(g) Situation in Côte d’Ivoire

Pending cases and proceedings

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

¹⁷ On 5 December 2014, the Office of the Prosecutor withdrew the charges against Uhuru Muigai Kenyatta in the Case No. ICC-01/09-02/11.

D. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA¹⁸

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 1993.¹⁹

1. Judgements delivered by the Appeals Chamber

- (a) *Prosecutor v. Vlastimir Đorđević*, Case No. IT-05-87/1-A, Judgement, 27 January 2014.
- (b) *Prosecutor v. Šainović et al.*, Case No. IT-05-87-A, Judgement, 23 January 2014.

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 2014.

E. INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA²⁰

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 1994.²¹

¹⁸ 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, for the period from 1 August 2013 to 31 July 2014, the Twenty-first annual 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/69/225-S/2014/556) and, for the period from 1 August 2014 to 31 July 2015, the Twenty-second annual 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/70/226-S/2015/585).

¹⁹ 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).

²⁰ 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.unictcr.org>. For more information about the Tribunal's activities see, for the period 1 July 2013 to 30 June 2014, the Nineteenth 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/69/206-S/2014/546) and, 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/2015/577).

²¹ The Statute of the Tribunal is in the annex to the resolution.

Judgements delivered by the Appeals Chamber

- (a) *Édouard Karemera and Matthieu Ngirumpatse v. The Prosecutor*, Case No. ICTR-98-44-A, Judgement, 29 September 2014.
- (b) *Callixte Nzabonimana v. The Prosecutor*, Case No. ICTR-98-44D-A, Judgement, 29 September 2014.
- (c) *Ildéphonse Nizeyimana v. The Prosecutor*, Case No. ICTR-00-55C-A, Judgement, 29 September 2014.
- (d) *Augustin Bizimungu v. The Prosecutor*, Case No. ICTR-00-56B-A, Judgement, 30 June 2014.
- (e) *Ndindiliyimana et al. v. The Prosecutor*, Case No. ICTR-00-56-A, Judgement, 11 February 2014.

F. MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS²²

The International Residual Mechanism for Criminal Tribunals was established in 2010 by Security Council resolution 1966 (2010), adopted on 22 December 2010.²³ 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.

The Appeals Chamber of the Mechanism delivered its first judgement in 2014.

Judgement

Augustin Ngirabatware v. The Prosecutor, Case No. MICT-12-29-A, Judgement, 18 December 2014.

G. EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA²⁴

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 2003,²⁵ entered into force on

²² 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 Second annual report of the International Residual Mechanism for Criminal Tribunals, for the period 1 July 2013 to 30 June 2014 (A/69/226-S/2014/555) and, for the period 1 July 2014 to 30 June 2015, and Third annual report of the International Residual Mechanism for Criminal Tribunals (A/70/225-S/2015/586).

²³ The Statute of the Mechanism is contained in the annex to the resolution.

²⁴ 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 20 October 2014 (A/69/536).

²⁵ United Nations, *Treaty Series*, vol. 2329, p. 117.

29 April 2005 and established the Extraordinary Chambers in the Courts of Cambodia to prosecute crimes committed during the period of Democratic Kampuchea.

Judgement and decision delivered by the Trial Chamber

- (a) *Nuon Chea and Khieu Samphan*, Case No. 002/19-09-2007/ECCC/TC, Decision on Defence Preliminary Objection regarding Jurisdiction over the crime against humanity of deportation, 29 September 2014.
- (b) *Nuon Chea and Khieu Samphan*, Case No. 002/19-09-2007/ECCC/TC, Judgement, 7 August 2014.

H. SPECIAL TRIBUNAL FOR LEBANON²⁶

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 2007,²⁷ 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. Decisions delivered by the Contempt Judge

- (a) *Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, Case No. STL-14-06/PT/CJ, Decision on Motion Challenging Jurisdiction, 6 November 2014.
- (b) *NEW TV S.A.L. and Karma Mohamed Tahsin Al Khayat*, Case No. STL-14-05/PT/CJ, Decision on Motion Challenging Jurisdiction and on Request for Leave to Amend Order in Lieu of an Indictment, 24 July 2014.

2. Decision delivered by the Appeals Chamber

NEW TV S.A.L. and Karma Mohamed Tahsin Al Khayat, Case No. STL-14-05/PT/AP/AR126.1, Decision on Interlocutory Appeal Concerning Personal Jurisdiction in Contempt Proceedings, 2 October 2014.

3. Pending cases and proceedings as at 31 December 2014

- (a) *The Prosecutor v. Ayyash et al.*, Case No. STL-11-01.
- (b) *NEW TV S.A.L. and Karma Mohamed Tahsin Al Khayat*, Case No. STL-14-05.
- (c) *Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*, Case No. STL-14-06.

²⁶ 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 for the period 1 March 2013 to 28 February 2014, the Fifth annual report of the Special Tribunal for Lebanon, and, for the period from 1 March 2014 to 28 February 2015, the Sixth annual report of the Special Tribunal for Lebanon.

²⁷ United Nations, *Treaty Series*, vol. 2461, p. 257.

I. RESIDUAL SPECIAL COURT FOR SIERRA LEONE²⁸

The Special Court for Sierra Leone²⁹ 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, 2002.³⁰ 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,³¹ 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 2014.

²⁸ 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>. For more information on the Court's activities see the First annual report of the President of the Residual Special Court for Sierra Leone, which is available at <http://www.rscsl.org/Documents/AnRpt2014.pdf>.

²⁹ 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, which is available at <http://www.rscsl.org/Documents/AnRpt11.pdf>.

³⁰ 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.

³¹ For the text of the Agreement and the Statute of the Residual Special Court dated 29 July 2010 see United Nations, *Treaty Series*, vol. 2871, p. 333. See also the Exchange of letters constituting an agreement between the United Nations and the Government of Sierra Leone regarding the interpretation and application of Article 6 of the Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Residual Special Court for Sierra Leone, United Nations, *Treaty Series*, vol. 2980.