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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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| | <i>Page</i> |
|---|-------------|
| (h) Interoffice memorandum regarding the optimal modality for operating UNIDO Desks | 581 |
| 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 | 585 |
| 1. Judgments | 585 |
| 2. Advisory Opinions | 585 |
| 3. Pending cases and proceedings as at 31 December 2010 | 585 |
| B. INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA | 586 |
| 1. Judgments | 586 |
| 2. Pending cases and proceedings as at 31 December 2010 | 587 |
| C. INTERNATIONAL CRIMINAL COURT | 587 |
| 1. Situations under investigation in 2010 | |
| (a) Situation in the Democratic Republic of the Congo | 588 |
| (b) Situation in the Central African Republic | 588 |
| (c) Situation in Uganda | 588 |
| (d) Situation in Darfur, the Sudan | 588 |
| (e) Situation in Kenya | 589 |
| 2. Judgments | 589 |
| D. INTERNATIONAL TRIBUNAL FOR THE FORMER YUGOSLAVIA | 589 |
| 1. Judgements delivered by the Appeals Chamber | 590 |
| 2. Judgements delivered by the Trial Chambers | 590 |
| E. INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA | 590 |
| 1. Judgements delivered by the Appeals Chamber | 590 |
| 2. Judgements delivered by the Trial Chambers | 591 |
| F. SPECIAL COURT FOR SIERRA LEONE | 591 |
| 1. Judgements | 591 |
| G. EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA | 592 |
| 1. Judgments delivered by the Supreme Court Chamber | 592 |
| 2. Judgments delivered by the Trial Chamber | 592 |
| H. SPECIAL TRIBUNAL FOR LEBANON | 592 |
| 1. Judgments | 592 |
| CHAPTER VIII. DECISIONS OF NATIONAL TRIBUNALS | 593 |

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 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.

On 12 May 2010, the President of the Court ordered that the case of *Certain Questions concerning Diplomatic Relations (Honduras v. Brazil)* be removed from the list of cases after noting that the Brazilian Government had not taken any step in the proceedings in the case. The Republic of Congo withdrew its application instituting proceedings in the case regarding *Certain Criminal Proceedings in France (Republic of the Congo v. France)* and the case was removed from the list of cases following an Order of 16 November 2010.

1. Judgments

- (i) *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Judgment, 30 November 2010.
- (ii) *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, 20 April 2010.

2. Advisory Opinions

- (i) *Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for Advisory Opinion)*, Advisory Opinion, 22 July 2010.

3. Pending cases and proceedings as at 31 December 2010

- (i) *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* (2010-).
- (ii) *Frontier Dispute (Burkina Faso/Niger)* (2010-).

¹ 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>. For more information about the Court's activities, see, for the period 1 August 2009 to 31 July 2010, Report of the International Court of Justice (A/65/4). At the time of publication, the report covering the period 1 August 2010 to 31 July 2011 was forthcoming.

- (iii) *Whaling in the Antarctic (Australia v. Japan)* (2010-).
- (iv) *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development (Request for Advisory Opinion)* (2010-).
- (v) *Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium v. Switzerland)* (2009-).
- (vi) *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* (2009-).
- (vii) *Jurisdictional Immunities of the State (Germany v. Italy)* (2008-).
- (viii) *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)* (2008-).
- (ix) *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russia)* (2008-).
- (x) *Aerial Herbicide Spraying (Ecuador v. Colombia)* (2008-)
- (xi) *Maritime Dispute (Peru v. Chile)* (2008-).
- (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-).
- (xvi) *Gabčíkovo-Nagymaros Project (Hungary/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, established a mechanism for cooperation between the two institutions.

1. Judgments

No judgments were delivered by the Tribunal in 2010.

² For more information about the Tribunal's activities, including relating to orders rendered in 2010, see the Annual report of the International Tribunal for the Law of the Sea for 2010 (SPLOS/222) and the Tribunal's website at 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 2010

- (i) *Case No. 18—The M/V “Louisa” Case (Saint Vincent and the Grenadines v. Spain)* (2010-).
- (ii) *Case No. 17—Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber)* (2010-).
- (iii) *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 COURT⁵

The International Criminal Court (ICC) is an independent permanent court established by the Rome Statute of the International Criminal Court, 1998.⁶ The Relationship Agreement between the International Criminal Court and the United Nations, 2004,⁷ outlines the relationship between the two institutions.

The Secretary-General of the United Nations, in his capacity as depositary of the Rome Statute of the International Criminal Court, convened a Review Conference of the Rome Statute from 31 May to 11 June 2010 in Kampala, Uganda. At the Review Conference, States parties reviewed and amended the Rome Statute, conducted a stocktaking of international criminal justice and adopted declarations and resolutions on a wide range of issues.⁸

As of 2010, the Court was investigating five situations. 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 situation in Darfur, the Sudan, which is a non-State party, was referred to the Court by the United Nations Security Council. After a thorough analysis of available information, the Prosecutor had opened and is conducting investigations in all of the above-mentioned situations. The situation in the Republic of Kenya was brought before the Court by the Office of the Prosecutor, acting under article 15 of the Rome Statute, which received information about crimes committed in Kenya in relation to the post-election violence of 2007–2008. In 2009, the Prosecutor was authorized to initiate an investigation into the situation in Kenya in relation to crimes against humanity allegedly committed between 1 June 2005 and 26 November 2009. In late 2010, the Prosecutor submitted two applications under article 58 of the Rome Statute to Pre-Trial Chamber II, requesting the issuance of summonses to appear to six individuals. Furthermore, the Office of the Prosecutor

⁵ For more information about the Court’s activities, see Report of the International Criminal Court, for the period 1 August 2009 to 31 July 2010 (A/65/313). At the time of publication, the report covering the period 1 August 2010 to 31 July 2011 was forthcoming. See also the Court’s website at <http://www.icc-cpi.int>.

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

⁷ *Ibid.*, vol. 2283, p. 195.

⁸ For more information about the 2010 Review Conference of the Rome Statute, see the conference website at <http://www.icc-cpi.int/Menus/ASP/ReviewConference>.

is conducting preliminary examinations in various situations, including in Afghanistan, Colombia, Côte d'Ivoire, Georgia, Guinea and Palestine.

1. Situations under investigation in 2010

(a) Situation in the Democratic Republic of the Congo

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) were ongoing in 2010. On 8 July 2010, Trial Chamber I ordered to stay the proceedings in the case against Thomas Lubanga Dyilo, considering that the fair trial of the accused was no longer possible because the Prosecution had failed to implement the Chamber's orders. Following the decision to stay the proceedings, Trial Chamber I ordered, on 15 July 2010, the release of the accused. The Prosecutor submitted two appeals against these decisions. On 8 October 2010, the Appeals Chamber reversed the decisions of Trial Chamber I to stay proceedings and to release the accused. In accordance with this decision, Thomas Lubanga Dyilo will remain in the custody of the Court during the trial proceedings, which were resumed.

An arrest warrant was issued under seals by the judges of the Court on 28 September 2010 in the case *The Prosecutor v. Callixte Mbarushimana* (ICC-01/04–01/10) and the suspect was arrested by the French authorities on 11 October 2010.

The suspect in the case *The Prosecutor v. Bosco Ntaganda* (ICC-01/04–02/06) remained at large throughout 2010.

(b) Situation in the Central African Republic

On 24 June, 2010, Trial Chamber III dismissed the admissibility and abuse of process challenges, raised by the Defence in the case *The Prosecutor v. Jean-Pierre Bemba Gombo* (ICC-01/05–01/08). The latter filed an appeal against this decision on 28 June 2010. On 19 October 2010, the Appeals Chamber confirmed the decision of Trial Chamber III entitled "Decision on the Admissibility and Abuse of Process Challenges" and dismissed Mr. Jean-Pierre Bemba Gombo's appeal against this decision. This judgment confirmed that the case against Mr. Bemba is admissible and the trial commenced on 22 November 2010.

(c) Situation in Uganda

The four suspects in the case *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* (ICC-02/04–01/05) remained at large throughout 2010.

(d) Situation in Darfur, the 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 2010.

On 12 July 2010, Pre-Trial Chamber I issued a second 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 2010.

On 15 June 2010, summonses to appear before Pre-Trial Chamber I were unsealed in the case *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* (ICC-02/05–03/09) and the suspects made their initial appearances on 17 June 2010.

On 8 February 2010, Pre-Trial Chamber I refused to confirm the charges against the suspect in the case *The Prosecutor v. Bahar Idriss Abu Garda* (ICC-02/05–02/09) due to insufficient evidence. On 23 April 2010, Pre-Trial Chamber I issued a decision rejecting the Prosecutor's application to appeal the decision declining to confirm the charges.

(e) Situation in Kenya

On 31 March 2010, Pre-Trial Chamber II authorized the Prosecutor to commence an investigation covering alleged crimes against humanity committed between 1 June 2005 and 26 November 2009. On 15 December 2010, the Prosecutor submitted to Pre-Trial Chamber II two applications under article 58 of the Rome Statute requesting the issuance of summonses to appear for William Samoei Ruto, Henry Kiprono Kosgey, Joshua Arap Sang (case one) and Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohamed Hussein Ali (case two) for their alleged responsibility in the commission of crimes against humanity.

2. Judgments

No judgments were delivered by the Trial Chambers or Appeals Chamber in 2010.

D. INTERNATIONAL TRIBUNAL FOR THE FORMER YUGOSLAVIA⁹

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 1993.¹⁰ The Tribunal has commenced all trials, and there are no more accused at the pretrial stage. However, two accused, Ratko Mladić and Goran Hadžić, are still at large.

⁹ 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. For more information about the Tribunal's activities, see, for the period 1 August 2009 to 31 July 2010, 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/65/205–S/2010/413). At the time of publication, the report covering the period 1 August 2010 to 31 July 2011 was forthcoming.

¹⁰ 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).

1. Judgements delivered by the Appeals Chamber

- (i) *Prosecutor v. Veselin Šljivančanin*, Case No. IT-95-13/1 -R.1, Review Judgement, 8 December 2010.
- (ii) *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-A, Judgement, 21 July 2010.
- (iii) *Prosecutor v. Rasim Delić*, Case No. IT-04-83-A, Judgement, 29 June 2010. Following the death of Rasim Delić on 16 April 2010, the Appeals Chamber formally terminated the appeal proceedings in the case and declared the trial judgement to be final.
- (iv) *Prosecutor v. Boškovski & Tarčulovski*, Case No. IT-04-82-A, Judgement, 19 May 2010.
- (v) *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67-R77.2 and IT-03-67-R77.3, Judgement on Allegations of Contempt, 19 May 2010.

2. Judgements delivered by the Trial Chambers

- (i) *Prosecutor v. Popović et al.*, Case No. IT-05-88-T, Judgement, 10 June 2010.
- (ii) *Prosecutor v. Zuhdija Tabaković*, Case No. IT-98-32/1-R77.1, Judgement on Allegations of Contempt, 15 March 2010.

E. INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA¹¹

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 1994.¹²

In July of 2010, the accused in an ongoing trial passed away (*The Prosecutor v. Joseph Nzirorera*, Case No. ICTR-98-38). Jean-Bosco Uwinkindi, who is facing charges before the Tribunal, was arrested on 30 June 2010 in Kampala, Uganda. On 2 July 2010 he was transferred to the United Nations Detention Facility in Arusha.

1. Judgements delivered by the Appeals Chamber

- (i) *Emmanuel Rukundo v. the Prosecutor*, Case No. ICTR-01-70-A, Judgement, 20 October 2010.

¹¹ 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 2009 to 30 June 2010, 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/65/188-S/2010/408). At the time of publication, the report covering the period 1 July 2010 to 30 June 2011 was forthcoming.

¹² The Statute of the Tribunal is contained in the annex to the resolution.

- (ii) *Callixte Kalimanzira v. the Prosecutor*, Case No. ICTR-05-88-A, Judgement, 20 October 2010.
- (iii) *Siméon Nchamihigo v. the Prosecutor*, Case No. ICTR-01-63-A, Judgement 18 March 2010.
- (iv) *Simon Bikindi v. the Prosecutor*, Case No. ICTR-01-72-A, Judgement, 18 March 2010.
- (v) *Léonidas Nshogoza v. the Prosecutor*, Case No. ICTR-2007-91-A, Judgement, 15 March 2010.

2. Judgements delivered by the Trial Chambers

- (i) *The Prosecutor v. Idelphonse Hategekimana*, Case No. ICTR-00-55b-T, Judgement, 6 December 2010.
- (ii) *The Prosecutor v. Gaspard Kanyarukiga*, Case No. ICTR-02-78-T, Judgement, 1 November 2010.
- (iii) *The Prosecutor v. Dominique Ntawukulilyayo*, Case No. ICTR-05-82-T, Judgement, 3 August 2010.
- (iv) *The Prosecutor v. Yussuf Munyakazi*, Case No. ICTR-97-36A-T, Judgement, 5 July 2010.
- (v) *The Prosecutor v. Ephrem Setako*, Case No. ICTR-04-81-T, Judgement, 25 February 2010.
- (vi) *The Prosecutor v. Tharcisse Muvunyi*, Case No. ICTR-00-55A-T (Retrial), Judgement, 11 February 2010.

F. SPECIAL COURT FOR SIERRA LEONE¹³

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.¹⁴

1. Judgements

No judgments were delivered by the Trial Chambers or the Appeals Chamber of the Special Court for Sierra Leone in 2010.

¹³ 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 2009 to May 2010, the Seventh Annual Report of the President of the Special Court. At the time of publication, the Eighth Annual Report, covering the period June 2010 to May 2011, was forthcoming.

¹⁴ United Nations, *Treaty Series*, vol. 2178, p. 137.

G. EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA¹⁵

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 2003,¹⁶ 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.

1. Judgments delivered by the Supreme Court Chamber

No judgments were delivered by the Supreme Court Chamber of the Extraordinary Chambers in the Courts of Cambodia in 2010.

2. Judgments delivered by the Trial Chamber

- (i) *Kaing Guek Eav "Duch"*, Case No. 001/18-07-2007-ECCC/TC, Judgment, 26 July 2010.

H. SPECIAL TRIBUNAL FOR LEBANON¹⁷

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.

On 15 January 2010, the President issued three Practice Directions on the Filing of Documents, on Depositions and Taking Witness Statements for use in Court, and on Video-Conference Links. In addition, one internal Standard Operating Procedure for the Registry on Holding Proceedings Away From the Seat of the Tribunal was adopted.

The Judges of the Special Tribunal met in a plenary session from 8 to 11 November 2010 to consider, among other issues, proposed amendments to the Rules of Procedure and Evidence. The Judges adopted a number of rule changes to enhance the efficiency, effectiveness and integrity of the Tribunal's proceedings.

1. Judgments

No judgments were delivered by the Trial Chamber or the Appeals Chamber of the Special Tribunal in 2010.

¹⁵ The texts of the decisions of the Extraordinary Chambers in the Courts of Cambodia are available on its website, <http://www.eccc.gov.kh>. For more information on the Court's activities, see the Yearly Financial and Activity Progress Report as at 31 December 2010 (forthcoming at the time of publication).

¹⁶ United Nations, *Treaty Series*, vol. 2329, p. 117.

¹⁷ For more information about the activities of the Special Tribunal, see the Tribunal's website at <http://www.stl-tsl.org>, the First Annual Report (2009–2010) covering the period 1 March to 28 February 2010 and the Second Annual Report covering the period 1 March 2010 to 28 February 2011.