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

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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) *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, 19 November 2012.
- (b) *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, 20 July 2012.
- (c) *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Compensation owed by the Democratic Republic of the Congo to the Republic of Guinea, Judgment, 19 June 2012.
- (d) *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, 3 February 2012.

2. Advisory Opinions

Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development, Advisory Opinion, 1 February 2012.

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 2011 to 31 July 2012, Report of the International Court of Justice, *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 4 (A/67/4)*. At the time of publication, the report covering the period 1 August 2012 to 31 July 2013 was forthcoming.

3. Pending cases and proceedings as at 31 December 2012

- (a) *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)* (2011-).
- (b) *Request for interpretation of the Judgment of 15 June 1962 in the case concerning the Temple of Preah Vihear (Cambodia v. Thailand)* (2011-).
- (c) *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* (2010-).
- (d) *Frontier Dispute (Burkina Faso/Niger)* (2010-).
- (e) *Whaling in the Antarctic (Australia v. Japan)* (2010-).
- (f) *Aerial Herbicide Spraying (Ecuador v. Colombia)* (2008-).
- (g) *Maritime Dispute (Peru v. Chile)* (2008-).
- (h) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)* (1999-).
- (i) *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* (1999-).
- (j) *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

- (a) *Case No. 20—The “ARA Libertad” Case (Argentina v. Ghana)*, Order, Request for the prescription of provisional measures, 15 December 2012.
- (b) *Case No. 19—The M/V “Virginia G” Case (Panama/Guinea-Bissau)*, Order, 2 November 2012.
- (c) *Case No. 16—Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*, Judgment, 14 March 2012.

² For more information about the Tribunal’s activities, including relating to orders rendered in 2012, see the Annual report of the International Tribunal for the Law of the Sea for 2012 (SPLOS/256) and the Tribunal’s website at <http://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 2012

- (a) *Case No. 19—The M/V “Virginia G” Case (Panama/Guinea-Bissau)* (2011-).
- (b) *Case No. 18—The M/V “Louisa” Case (Saint Vincent and the Grenadines v. Kingdom of Spain)* (2010-).

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 International Criminal Court and the United Nations, 2004,⁷ outlines the relationship between the two institutions.

In 2012, the Court continued to consider the situations in Uganda, the Democratic Republic of the Congo, Darfur (the Sudan), the Central African Republic, Kenya, Libya and Côte d’Ivoire. In addition, on 18 July 2012, the Government of Mali referred to the Prosecutor the situation of crimes allegedly committed in the territory of Mali as of January 2012.

Furthermore, the Office of the Prosecutor conducted preliminary examinations in various situations, including Afghanistan, Colombia, Georgia, Guinea, Honduras, Nigeria and the Republic of Korea.

On 3 April 2012, the Office of the Prosecutor concluded that the declaration lodged by the Palestinian National Authority under article 12, paragraph 3, of the Rome Statute on 22 January 2009 accepting jurisdiction of the Court did not meet its statutory requirements.

On 14 March 2012, the Court issued its first verdict in the case of *The Prosecutor v. Thomas Lubanga Dyilo* (ICC-01/04–01/06) (see below under Democratic Republic of the Congo).

1. Situations and cases before the Court as at 31 December 2012

(a) Situation in Uganda

In December 2003, the situation concerning Northern Uganda was referred to the Court by Uganda. In July 2004, the Prosecutor opened an investigation.

Pending case

The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen (ICC-02/04–01/05).

⁵ For more information about the Court’s activities, see Report of the International Criminal Court, for the period 1 August 2011 to 31 July 2012 (A/67/308). At the time of publication, the report covering the period 1 August 2012 to 31 July 2013 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.

(b) Situation in the Democratic Republic of the Congo

In March 2004, the situation was referred to the Court the Democratic Republic of the Congo. In June 2004, the Prosecutor opened an investigation.

(i) Judgments delivered by the Trial Chamber

- (a) *The Prosecutor v. Mathieu Ngudjolo Chui*, Case No. ICC-01/04–02/12, Judgment, 18 December 2012.
- (b) *The Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04–01/06, Judgment, 14 March 2012.

(ii) Judgment delivered by the Appeals Chamber

The Prosecutor v. Callixte Mbarushimana, Case No. ICC-01/04–01/10, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled “Decision on the confirmation of charges”, 30 May 2012.

(iii) Pending cases and proceedings

- (a) *The Prosecutor v. Germain Katanga*, Case No. ICC-01/04–01/07.
- (b) *The Prosecutor v. Mathieu Ngudjolo Chui*, Case No. ICC-01/04–02/12 (currently in appeal phase).
- (c) *The Prosecutor v. Bosco Ntaganda*, Case No. ICC-01/04–02/06.
- (d) *The Prosecutor v. Sylvestre Mudacumura*, Case No. ICC-01/04–01/12.

(c) Situation in Darfur, the Sudan

On 31 March 2005, the Security Council referred the situation in Darfur, the Sudan, to the Prosecutor of the Court.⁸ In June 2005, the Prosecutor opened an investigation.

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. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Case No. ICC-02/05–03/09.
- (d) *The Prosecutor v. Abdel Raheem Muhammad Hussein*, Case No. ICC-02/05–01/12.

⁸ Security Council resolution 1593 (2005).

(d) Situation in the Central African Republic

The situation was referred to the Court by the Central African Republic in December 2004. The Prosecutor opened an investigation in May 2007.

Pending case

The Prosecutor v. Jean-Pierre Bemba Gombo, Case No. ICC-01/05–01/08.

(e) Situation in Kenya

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

Pending cases and proceedings

- (a) *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, Case No. ICC-01/09–01/11.⁹
- (b) *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohamed Hussein Ali*, Case No. ICC-01/09–02/11.⁹

(f) Situation in Libya

On 26 February 2011, the United Nations Security Council referred the situation in Libya to the Prosecutor of the Court.¹⁰ On 3 March 2011, the Prosecutor opened an investigation.

Pending case

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

(g) Situation in Côte d'Ivoire

On 3 October 2011, Pre-Trial Chamber III granted the Prosecutor's request for authorization to open an investigation *proprio motu* into the situation in Côte d'Ivoire.

(i) *Judgment delivered by the Appeals Chamber*

The Prosecutor v. Laurent Gbagbo, Case No. ICC-02/11–01/11, Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I on jurisdiction and stay of the proceedings, 12 December 2012.

⁹ On 23 January 2012, Pre-Trial Chamber II declined to confirm the charges against Henry Kiprono Kosgey and Mohammed Hussein Ali.

¹⁰ Security Council resolution 1970 (2011).

(ii) *Pending cases*

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

D. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA¹¹

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) of 25 May 1993.¹²

1. Judgements delivered by the Appeals Chamber

- (a) *Prosecutor v. Milan Lukić and Sredoje Lukić*, Case No. IT-98-32/1-A, Judgment, 4 December 2012.
- (b) *Prosecutor v. Vojislav Šešel*, Case No. IT-03-67-R77.3-A, Judgement on Allegations of Contempt, 28 November 2012.
- (c) *Prosecutor v. Ante Gotovina and Mladen Markač*, Case No. IT-06-90-A, Judgment, 16 November 2012.
- (d) *Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1 -R77.2-A, Judgement on Allegations of Contempt, 16 November 2012.

2. Judgements delivered by the Trial Chambers

- (a) *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88/2-T, Judgement, 12 December 2012.
- (b) *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84bis-T, Retrial Judgement, 29 November 2012.
- (c) *Prosecutor v. Vojislav Šešel*, Case No. IT-03-67-R77.4, Judgement on Allegations of Contempt, 28 June 2012.
- (d) *Prosecutor v. Milan Tupajić*, Case No. IT-95-5/18-R77.2, Judgement on Allegations of Contempt, 24 February 2012.

¹¹ 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 <http://www.icty.org>. For more information about the Tribunal's activities, see, for the period 1 August 2011 to 31 July 2012, 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/67/214-S/2012/592). At the time of publication, the report covering the period 1 August 2012 to 31 July 2013 was forthcoming.

¹² 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).

- (e) *Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1 -R77.2, Written Reasons for Oral Sentencing Judgement, 6 March 2012.
- (f) *Prosecutor v. Jelena Rašić*, Case No. IT-98-32/1 -R77.2, Oral Sentencing Judgement on Allegations of Contempt, 7 February 2012.

E. INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA¹³

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 1994.¹⁴

On 28 June 2012, the Referral Chamber designated under rule 11*bis* of the Tribunal's Rules of Procedure and Evidence referred the case of the fugitive accused Phénéas Munyarugarama (Case No. ICTR-02-79-R11*bis*) to the authorities of Rwanda. This was the eighth and final case to be transferred to Rwanda by the Tribunal following that of *The Prosecutor v. Bernard Munyagishari* (Case No. ICTR-2005-89-R11*bis*) (6 June 2012) and those of the fugitives accused Aloys Ndimbati (Case No. ICTR-95-1F-R11*bis*) (25 June 2012), Charles Ryandikayo (Case No. ICTR-95-1E-R11*bis*) (20 June 2012), Ladislav Ntaganzwa (Case No. ICTR-96-9-R11*bis*) (8 May 2012), Charles Sikubwabo (Case No. ICTR-95-1D-R11*bis*) (26 March 2012) and Fulgence Kayishema (Case No. ICTR-01-67-R11*bis*) (22 February 2012).

On 1 July 2012, the Arusha branch of the International Residual Mechanism for International Criminal Tribunals commenced operations to carry out certain residual functions of the International Criminal Tribunal for Rwanda, including trial and appellate proceedings, the supervision and enforcement of sentences, and tracking the remaining fugitives.¹⁵ On 1 August 2012, the files of the three high-level fugitives, Félicien Kabuga, Protais Mpiranya and Augustin Bizimana, were handed over from the Prosecutor of the Tribunal to the Prosecutor of the Mechanism.

1. Judgements delivered by the Appeals Chamber

- (a) *Jean-Baptiste Gatete v. the Prosecutor*, Case No. ICTR-00-61-A, Judgement, 9 October 2012.

¹³ 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.unictr.org>. For more information about the Tribunal's activities, see, for the period 1 July 2011 to 30 June 2012, Seventeenth 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/67/253-S/2012/594). At the time of publication, the report covering the period 1 July 2012 to 30 June 2013 was forthcoming.

¹⁴ The Statute of the Tribunal is contained in the annex to the resolution.

¹⁵ See S/2012/849. For more information about the International Residual Mechanism for International Criminal Tribunals, see section 17 of chapter III above.

- (b) *Aloys Ntabakuze v. the Prosecutor*, Case No. ICTR-98-41A-A, Judgement, 8 May 2012.
- (c) *Ildéphonse Hategekimana v. the Prosecutor*, Case No. ICTR-00-55B-A, Judgement, 8 May 2012.
- (d) *Gaspard Kanyarukiga v. the Prosecutor*, Case No. ICTR-02-78-A, Judgement, 8 May 2012.

2. Judgements delivered by the Trial Chambers

- (a) *The Prosecutor v. Augustin Ngirabatware*, Case No. ICTR-99-54-T, 20 December 2012.
- (b) *The Prosecutor v. Ildéphonse Nizeyimana*, Case No. ICTR-2000-55C-T, Judgement and Sentence, 19 June 2012.
- (c) *The Prosecutor v. Callixte Nzabonimana*, Case No. ICTR-98-44D-T, Judgement and Sentence, 31 May 2012.
- (d) *The Prosecutor v. Édouard Karemera and Matthieu Ngirumpatse*, Case No. ICTR-98-44-T, Judgement and Sentence, 2 February 2012.

F. SPECIAL COURT FOR SIERRA LEONE¹⁶

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.¹⁷ The Court is mandated to try those who bear 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.

On 26 April 2012, Trial Chamber II delivered its judgment in the case of *The Prosecutor v. Charles Ghankay Taylor*. Charles Taylor, the former President of Liberia, was found guilty and convicted on all counts of an 11-count indictment, making him the first former Head of State to be convicted by an international criminal tribunal since 1946. The trial is currently in the appeal phase.

1. Judgements delivered by the Appeals Chamber

No judgements were delivered by the Appeals Chamber of the Special Court for Sierra Leone in 2012.

¹⁶ The texts of the judgements 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 1 June 2011 to 31 May 2012, the Ninth Annual Report of the President of the Special Court. At the time of publication, the Tenth Annual Report, covering the period 1 June 2012 to 31 May 2013, was forthcoming.

¹⁷ For the text of the Agreement and the Statute of the Special Court dated 16 January 2002, see United Nations, *Treaty Series*, vol. 2178, p. 137.

2. Judgements delivered by the Trial Chambers

- (a) *Independent Counsel v. Bangura et al.*, Case No. SCSL-2011-02-T, Sentencing Judgement in Contempt Proceedings, 11 October 2012.
- (b) *Independent Counsel v. Bangura et al.*, Case No. SCSL-2011-02-T, Judgement in Contempt Proceedings, 25 September 2012.
- (c) *The Prosecutor v. Eric Senessie*, Case No. SCSL-2011-01-T, Judgement in Contempt Proceedings, 21 June 2012.
- (d) *The Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-01-T, Sentencing Judgement, 30 May 2012.
- (e) *The Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-01-T, Judgement, 18 May 2012.

G. EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA¹⁸

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 2003,¹⁹ 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. Judgement delivered by the Supreme Court Chamber

Kaing Guek Eav "Duch", Case No. 001/18-07-2007-ECCC/SC, Appeal Judgement, 3 February 2012.

2. Judgements delivered by the Trial Chamber

No judgements were delivered by the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia in 2012.

¹⁸ 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 Report of the Secretary-General on the Khmer Rouge trials of 19 September 2012 (A/67/380) and the Yearly Financial and Activity Progress Report as at 31 December 2012 (forthcoming at the time of publication).

¹⁹ United Nations, *Treaty Series*, vol. 2329, p. 117.

H. SPECIAL TRIBUNAL FOR LEBANON²⁰

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 2007,²¹ and Security Council resolution 1757 (2007) of 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.

Judgements

No judgements were delivered by the Trial Chamber or the Appeals Chamber of the Special Tribunal for Lebanon in 2012.

²⁰ For more information about the activities of the Special Tribunal, see the Tribunal's website at <http://www.stl-tsl.org>. See the third annual report of the Special Tribunal covering the period 1 March 2011 to 29 February 2012 (S/2012/205) and the fourth annual report covering the period 1 March 2012 to 29 February 2013.

²¹ United Nations, *Treaty Series*, vol. 2461, p. 257.