HAGUE CASE LAW – LATEST DEVELOPMENTS[1]

Permanent Court of Arbitration

(1) *Conservation and Management of Fishery Resources in the South Pacific Ocean (Russian Federation* v. *the Commission of the SPRFMO)*

On 5 July 2013, a Review Panel established under Article 17 and Annex II of the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (the Convention) issued its findings and recommendations following an objection from the Russian Federation against a decision of the Commission of the South Pacific Regional Fisheries Management Organisation (SPRFMO). The Permanent Court of Arbitration provided administrative assistance in these proceedings.

The Convention, adopted on 14 November 2009 and entered into force on 24 August 2012, intends to ensure the 'long-term conservation and sustainable use of fishery resources in the South Pacific Ocean and … [to safeguard] the marine ecosystems' there. It also provides for the establishment of the SPRFMO which comprises the above-mentioned Commission. At its first meeting in January 2013, the Commission adopted several conservation measures, including one measure which focused on the conservation and management of Chilean jack mackerel. This measure provided for individual catch limits for members of the SPRFMO and so-called cooperating non-contracting parties for 2013. The Russian Federation objected to this decision since the Commission did not accord any catch limit to the Russian Federation.

According to the Review Panel the decision indeed unjustifiably discriminated against the Russian Federation. The Panel recommended that Russia would authorise its vessels to catch Chilean jack mackerel only in consultation with the SPRMFO so that the total allowable catch is not surpassed.

International Criminal Tribunal for the Former Yugoslavia

(1) *Prosecutor* v. *Karadžić (Appeals Chamber)*

On 11 July 2013, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) rendered its judgment on appeal in the case

1. See: <www.icj-cij.org>; <www.pca-cpa.org>; <www.icty.org>; and <www.unictr.org>.

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against Radovan Karadžić. Karadžić is the former President of Republika Srpska and the former Supreme Commander of the Bosnian Serb Army (VRS). He is charged with multiple crimes committed during the war in the Former Yugoslavia between 1992 and 1995. On 28 June 2012, Trial Chamber III dismissed Karadžić's motion for dismissal pursuant to Rule 98*bis* of the Tribunal's Rules of Procedure and Evidence on 10 out of 11 counts of the indictment. Rule 98*bis* provides: 'At the close of the Prosecutor's case, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgment of acquittal on any count if there is no evidence capable of supporting a conviction.' However, the Trial Chamber III granted Karadžić's motion in relation to Count 1 of the Indictment and acquitted him of genocide allegedly committed in several municipalities of Bosnia and Herzegovina between March and December 1992. According to the Trial Chamber, the evidence did not reach the level from which a reasonable trier of fact could infer that genocide had been committed.

The Appeals Chamber, however, found that the Trial Chamber had erred by finding that it was impossible to deduce certain types of genocidal acts or genocidal intent from the evidence submitted by the Prosecution. The Appeals Chamber subsequently reversed the Trial Chamber's acquittal of Karadžić under this Count of the Indictment and reinstated the charges against him.

(2) *Prosecutor* v. *Krstić*

On 18 July 2013, the Trial Chamber of the ICTY rendered its judgment in the contempt case against Radislav Krstić. Krstić is the former (Deputy) Commander of the Drina Corps of the VRS. On 2 August 2001 he was convicted by the Trial Chamber of multiple crimes committed in Srebrenica in July 1995, including the crime of genocide. As such, Krstić became the first person to be convicted of genocide by the Tribunal. He was sentenced to 46 years' imprisonment. His convictions were generally upheld by the Appeals Chamber on 19 April 2004, including the Trial Chamber's finding that genocide had been committed, albeit on different modes of liability. The Appeals Chamber subsequently reduced Krstić's sentence to 35 years' imprisonment.

Krstić was found not guilty by the Trial Chamber of contempt of the Tribunal for refusing to give testimony in the Karadžić trial. A refusal by a witness to answer questions may qualify as contempt of the Tribunal pursuant to Rule 77(A) of the Tribunal's Rules of Procedure and Evidence. The Tribunal was satisfied that Krstić suffered from Post-Traumatic Stress Syndrome, a condition which had deteriorated after being subpoenaed on 23 October 2012 by the Trial Chamber upon the request of Karadžić. Krstić therefore had a reasonable excuse to refuse to testify.

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