HAGUE CASE LAW – LATEST DEVELOPMENTS[1]

Permanent Court of Arbitration

(1) *The Railway Land Arbitration (Malaysia* v. *Singapore)*

On 30 October 2014, an Arbitral Tribunal constituted in accordance with an agreement between Singapore and Malaysia of 9 January 2012 and administered by the Permanent Court of Arbitration rendered its award in the dispute between Singapore and Malaysia concerning railway land held by Malaysia in Singapore. The dispute between both states had arisen in relation to the effect of an agreement concluded between the Parties on 27 November 1990, namely the 'Points of Agreement on Malayan Railway Land in Singapore'. Malaysia held lands in Singapore under titles which generally restricted the use that it could make of these lands to the operation of a railway that ran through Singapore. The agreement also conferred an option on Malaysia which provided for the vesting of ownership of three parcels to a joint venture (M-S Pte Ltd) to be jointly owned by Malaysia and Singapore for commercial development. Malaysia did not exercise that option. The question submitted to the tribunal is whether this joint venture would have been obliged to pay a development tax (amounting to S$1.47 billion) in relation to the increase in land value following the granting of permission to change the use of the land. The tribunal sided with Malaysia in this dispute and ruled that M-S Pte Ltd would not have been liable to pay such tax if the parcels had been vested in this company and if it had actually developed the land in accordance with the proposed land use.

International Criminal Court

(1) *Prosecutor* v. *Saif Al-Islam Gaddafi and Abdulla Al-Senussi (Appeals Chamber)*

On 24 July 2014, the Appeals Chamber of the International Criminal Court (ICC) confirmed the decision of the Pre-Trial Chamber I decision of 11 October 2013 that the case brought against Al-Senussi is inadmissible before the ICC. The appeal against the Pre-Trial Chamber's decision of inadmissibility was brought by Al-Senussi.

---

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

Netherlands International Law Review, LXI: 481-483, 2014
© 2014 *T.M.C. Asser Instituut and Contributors*
doi:10.1017/S0165070X14001375

https://doi.org/10.1017/S0165070X14001375 Published online by Cambridge University Press

The Appeals Chamber ruled that the defence had been unable to demonstrate that Libya was unable or unwilling to carry out genuine proceedings against Al-Senussi (in the same case) within the meaning of Article 17 Statute. According to the Appeals Chamber, the terms of Article 17 Statute must generally be understood as referring to proceedings which will lead to a suspect evading justice, in the sense of not appropriately being tried genuinely to establish his or her criminal responsibility, in the equivalent of sham proceedings that are concerned with that person's protection. It does not involve a mere assessment of whether due process of the rights of the suspect have been breached per se. There may be circumstances, however, when the violations of his rights are so egregious that the proceedings can no longer be regarded as providing any form of justice.

The Appeals Chamber has no bearing on an earlier decision of the Appeals Chamber of 21 May 2014 in relation to Gaddafi. On that day, the Appeals Chamber confirmed the decision of the Pre-Trial Chamber I of 31 May 2013 in which the Pre-Trial Chamber had rejected Libya's objection to the admissibility of the case against Gaddafi. Libya was reminded of its obligations to surrender Gaddafi to the Court.

International Criminal Tribunal for Rwanda

(1) *The Prosecutor* v. *Karemera and Ngirumpatse; Nizeyimana; Nzabonimana (Appeals Chamber)*

On 29 September 2014, the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) rendered judgments in the cases of (1) Karemera and Ngirumpatse, (2) Nizeyimana; and (3) Nzabonimana.

In the first case, Karemera and Ngirumpatse were both convicted by Trial Chamber III on 2 February 2012 of genocide, conspiracy to commit genocide, and direct and public incitement to commit genocide, crimes against humanity (rape and extermination) and war crimes (killing and causing violence to health and well-being). A third accused – Nzirorera – had died in 2010 pending the proceedings. Both men were high-profile politicians during the events in 1994. Karemera was the First Vice President of the MRND party, a member of the MRND Executive Bureau and the Minister of the Interior and Communal Development for the Interim Government. Ngirumpatse was the National Party Chairman and Chairman of the MRND Executive Bureau. Both men were sentenced to life imprisonment. Although the Appeals Chamber reversed some factual findings of the Trial Chamber, it affirmed their sentences of life imprisonment.

In the second case, Nizeyimana was convicted by Trial Chamber III on 19 June 2012 of genocide, crimes against humanity (extermination and murder), and war crimes (murder). He was not convicted of rape as a crime against humanity and a war crime. Nizeyimana was a captain at the military training school in Butare town called the 'École des Sous-Officiers' (ESO). He was sentenced to

https://doi.org/10.1017/S0165070X14001375 Published online by Cambridge University Press

life imprisonment. The Appeals Chamber reversed Nizeyimana's convictions for genocide, extermination as a crime against humanity, and murder as a war crime in relation to the killings at Cyahinda Parish around 18 April 1994 and his convictions for genocide and murder as a crime against humanity and a war crime in relation to the killing of Pierre Claver Karenzi at the Hotel Faucon roadblock around 21 April 1994. The Appeals Chamber affirmed all other convictions and dismissed the Prosecution's appeal. It reduced Nizeyimana's sentence from life imprisonment to 35 years' imprisonment.

In the third case, Nzabonimana was convicted on 31 May 2012 by Trial Chamber III of genocide, conspiracy to commit genocide and direct public incitement to commit genocide, and crimes against humanity (extermination). The crime of murder as a crime against humanity was dismissed. Nzabonimana was the Minister of Youth and Associative Movements ('Minister of Youth') and he was Chairman of the MRND party in Gitarama prefecture during the events in 1994. He was sentenced to life imprisonment. Although the Appeals Chamber reversed some of Nzabonimana's convictions, it affirmed his sentence of life imprisonment.

Erik V. Koppe
(Managing Editor)

https://doi.org/10.1017/S0165070X14001375 Published online by Cambridge University Press