HAGUE CASE LAW – LATEST DEVELOPMENTS

Permanent Court of Arbitration

(1) *The Bay of Bengal Maritime Boundary Arbitration (Bangladesh* v. *India)*

On 7 July 2014, an Arbitral Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS) and administered by the Permanent Court of Arbitration, rendered its award in the dispute between the People's Republic of Bangladesh and the Republic of India concerning the delimitation of the maritime boundary between both states. The Arbitral Tribunal ruled that it had jurisdiction to delimit the territorial sea, the exclusive economic zone and the continental shelf within 200 nautical miles. Further the Arbitral Tribunal determined that it had jurisdiction to establish the location of the land boundary terminus and to delimit the continental shelf beyond 200 nautical miles on the basis of an agreement between the parties.

Subsequently, the Tribunal first established the land boundary terminus by reference to an award rendered in 1947 by Sir Cyril Radcliffe, the Chairman of the Bengal Boundary Commission (the Radcliffe Award) and a notification (Notification No. 964 Jur.) of the Governor of Bengal of 1925. Second, the tribunal established the delimitation of the territorial sea on the basis of an equidistance line taking into consideration the special circumstance that the land boundary terminus (established by reference to the Radcliff Award) is not a point on the equidistance line. Third, the tribunal established the delimitation of the exclusive economic zone and the continental shelf within 200 nautical miles by relying on the 'equidistance/relevant circumstances' method, since there were no circumstances which would make this method inappropriate. The tribunal then proceeded on the basis of a provisional equidistance line and used the concavity of the Bay of Bengal as a relevant circumstance to justify an adjustment of the line in order to produce an equitable result. Fourth, the tribunal established the delimitation of the continental shelf beyond 200 nautical miles on the basis of the same method. Fifth, the tribunal concluded that the delimitation line did not yield a disproportionate result. Finally, the tribunal decided in relation to a grey area, which is located beyond 200 nautical miles from the coast of Bangladesh and within 200 nautical miles from the coast of India, that within this grey area the boundary line only delimits India's and Bangladesh's sovereign rights with respect to the continental shelf. It does not delimit India's sovereign rights to the exclusive economic zone in the superjacent waters.

Netherlands International Law Review, LXI: 261-263, 2014
© 2014 *T.M.C. Asser Instituut and Contributors*
doi:10.1017/S0165070X14001235

https://doi.org/10.1017/S0165070X14001235 Published online by Cambridge University Press

International Criminal Court

(1) *Prosecutor* v. *Katanga*

On 23 May 2014, Trial Chamber II of the International Criminal Court (ICC) sentenced Katanga to 12 years' imprisonment. Katanga was commander of the Ngiti militia, which gradually adopted the name 'Force de résistance patriotique en Ituri' (FRPI) (Patriotic Force of Resistance in Ituri). He was convicted by the Trial Chamber on 7 March 2014 as an accessory to crimes against humanity (murder) and war crimes (murder, attacking a civilian population, the destruction of property and pillage), within the framework of a non-international armed conflict. These crimes were committed on 24 February 2003 during the attack on the village of Bogoro in the Ituri district of the Democratic Republic the Congo (DRC). According to the majority opinion, the sentence reflected various aggravating (the scope and gravity of the crimes and Katanga's significant contribution) and mitigating factors (active participation in the demobilisation process for the benefit of child soldiers and his personal situation). The Trial Chamber did not deduct Katanga's detention by Congolese authorities in 2005 and his notification of the arrest warrant by the ICC in 2007, since the majority of Trial Chamber II (Van den Wyngaert dissenting) were of the opinion that the available evidence showed that Katanga was not detained for the crimes committed in Bogoro on 24 February 2003.

International Criminal Tribunal for the Former Yugoslavia

(1) *Prosecutor* v. *Mladić*

On 15 April 2014, Trial Chamber I dismissed Mladić's motion for acquittal on a number of charges pursuant to Rule 98*bis* of the ICTY's Rules of Procedure and Evidence. Mladić is the former Commander of the Main Staff of the Bosnian Serb Army. He is being prosecuted for genocide, crimes against humanity (persecutions on political, racial and religious grounds; extermination; murder; deportation; and inhumane acts) and war crimes (murder; terror; unlawful attacks; and the taking of hostages) committed in Bosnia and Herzegovina between March 1992 and 30 November 1995. The Trial Chamber upheld the view that Rule 98*bis* only allows for acquittals in relation to entire counts and not to individual charges or incidents. Consequently, the Trial Chamber rejected Mladić's challenges to particular crimes and incidents, including challenges relating to the modes of liability with respect to particular crimes. In any case, the Trial Chamber held that the Prosecution had presented sufficient evidence under the applicable legal standard at this stage of the proceedings for all counts to stand.

https://doi.org/10.1017/S0165070X14001235 Published online by Cambridge University Press

International Criminal Tribunal for Rwanda

(1) *The Prosecutor* v. *Bizimungu (Appeals Chamber)*

On 30 June 2014, the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) rendered its judgment in the case against Bizimungu who is the former commander of military operations for the Ruhengeri Sector and the former Chief of Staff of the Rwandan Army. On 17 May 2011, he was convicted by Trial Chamber II of genocide, crimes against humanity (murder, extermination, and rape) and war crimes (murder and rape) in relation to various attacks in April, May and June 1994. He was sentenced to 30 years' imprisonment.

The Appeals Chamber found that the Trial Chamber had failed to make any legal findings in relation to Bizimungu's convictions for genocide in relation to crimes committed in Rwankeri Sector and at the Josephite Brothers compound, the *École des sciences infirmières de Kabgayi*, the Musambira Commune office and dispensary and TRAFIPRO. According to the Appeals Chamber, the absence of any relevant legal findings in the Trial Judgment constituted a manifest failure to provide a reasoned opinion, which was unprecedented in the history of the Tribunal. In order to safeguard Bizimungu's right to an effective appeal, the Appeals Chamber decided to sever the case of Bizimungu from the original *Military II* case, which also involved the prosecution of Ndindiliyimana, Nzuwonemeye, and Sagahutu earlier this year. Further, the Appeals Chamber found that the Trial Chamber had erred in finding that Bizimungu had authority and effective control over the *Interhamwe* who participated in attacks at various locations. The Trial Chamber had therefore erred in holding him criminally responsible as a superior for the acts committed by *Interhamwe*.

The Appeals Chamber subsequently reversed Bizimungu's convictions for genocide in Rwankeri Sector; his convictions for crimes committed by *Interhamwe* at the *École des sciences infirmières de Kabgayi*, the Musambira Commune office and dispensary, the Butare Prefecture office and the Episcopal Church of Rwanda, and Cyangugu stadium; his convictions for crimes against humanity (murder and rape) and war crimes (rape) in relation to crimes committed at the Butare prefecture office and the Episcopal Church of Rwanda; his convictions for genocide, crimes against humanity (murder and rape) and war crimes (murder and rape) in relation to crimes committed at the Musambira Commune office; and his convictions for genocide, crimes against humanity (rape) and war crimes (rape) in relation to the crimes committed at the Musambira dispensary. The Appeals Chamber affirmed all other convictions as well as his sentence of 30 years' imprisonment due to the seriousness of his crimes.

Erik V. Koppe
(Managing Editor)

https://doi.org/10.1017/S0165070X14001235 Published online by Cambridge University Press