Hague Case Law: Latest Developments

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International Court of Justice

(1) *Qatar v. United Arab Emirates*

On 4 February 2021, the International Court of Justice (‘ICJ’ or ‘Court’) delivered its judgment on the preliminary objections raised by the United Arab Emirates (‘UAE’) in the case concerning the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*. In its judgment the Court upheld the first preliminary objection raised by the UAE and found that it had no jurisdiction to entertain the Application filed by the State of Qatar (‘Qatar’) on 11 June 2018.

On 5 June 2017, the UAE issued a statement that it had decided to: ‘[p]reven[t] Qatari nationals from entering the UAE or crossing its point of entry, giving Qatari residents and visitors in the UAE 14 days to leave the country for precautionary security reasons. The UAE nationals are likewise banned from traveling to or staying in Qatar or transiting through its territories.’ The UAE took certain additional measures relating to Qatari media and speech in support of Qatar and blocked several websites operated by Qatari companies, including those run by Al Jazeera Media Network. On 6 July 2017, the Abu Dhabi Department of Economic Development issued a circular prohibiting the broadcasting of certain television channels operated by Qatari companies.

On 11 June 2018, Qatar instituted proceedings against the UAE with regard to alleged violations of Articles 2, 4, 5, 6 and 7 of the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (‘the Convention’ or ‘CERD’), to which both States are parties. In its Application, Qatar asserted that the UAE had enacted and implemented a series of discriminatory measures directed at Qataris based expressly on their national origin, resulting in alleged human rights violations. Qatar sought to base the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article 22 of CERD.

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The UAE requested the Court to adjudge and declare that the Court lacked jurisdiction to address the claims brought by Qatar on the basis of two preliminary objections. In its first preliminary objection, the UAE maintained that the Court lacked jurisdiction *ratione materiae* over the dispute between the Parties because the alleged acts did not fall within the scope of CERD. In its second preliminary objection, the UAE asserted that Qatar had failed to satisfy the procedural preconditions of Article 22 of CERD.

After analyzing the arguments of the Parties, the Court observed that the Parties disagreed in respect of Qatar's three claims that the UAE had violated its obligations under CERD. First, the claim that the measures that Qatar describes as the 'expulsion order' and the 'travel bans', by their express references to Qatari nationals, discriminated against Qataris on the basis of their current nationality. Secondly, the claim that the UAE imposed racially discriminatory measures on certain Qatari media corporations. Thirdly, the claim that the UAE had engaged in 'indirect discrimination' against persons of Qatari national origin by taking these measures and others.

With regard to the first claim, the Court found that the 'expulsion order' and 'travel bans' did not fall within the scope of CERD, since these measures were based on the current nationality of Qatari citizens, and that such a differentiation is not covered by the term 'national origin' in Article 1, paragraph 1, of the Convention. In relation to the second claim the Court noted that the Convention concerns only individuals or groups of individuals and not (Qatari media) corporations. As regards the third claim, in the Court's view, the various measures of which Qatar complained did not, either by their purpose or by their effect, give rise to racial discrimination against Qataris as a distinct social group on the basis of their national origin. The Court further observed that declarations criticizing a State or its policies cannot be characterized as racial discrimination within the meaning of CERD.

In light of the above, the Court concluded that the first preliminary objection raised by the UAE must be upheld. Having found that it did not have jurisdiction *ratione materiae* in the present case under Article 22 of the Convention, the Court did not consider it necessary to examine the second preliminary objection raised by the UAE.

(2) *Equatorial Guinea v. France*

On 11 December 2020, the International Court of Justice delivered its judgment on the merits of the case concerning *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*. In this case the Parties disagreed on whether the building at 42 avenue Foch in Paris constitutes part of the premises of Equatorial Guinea's diplomatic mission in France and is thus entitled to the treatment afforded under Article 22 of the Vienna Convention on Diplomatic Relations (the 'Vienna Convention' or the 'Convention'). The Parties also disagreed on whether France, by the actions of its authorities in relation to the building, breached its obligations under that article.

The Court first examined the circumstances in which a property acquires the status of 'premises of the mission' within the meaning of Article 1(i) of the Vienna Convention. In this regard, it considered that the Convention cannot be interpreted

so as to allow a sending State unilaterally to impose its choice of mission premises upon the receiving State where the latter has objected to this choice. The Court further considered that any such objection must be timely, not arbitrary, and not discriminatory in character.

The Court then examined the diplomatic exchanges of the Parties and considered that the facts recounted demonstrate that France had promptly (timely) and consistently expressed its objection to the designation of the building in question as part of the premises of Equatorial Guinea's diplomatic mission. Regarding the question of whether France's objection was non-arbitrary and non-discriminatory in character, the Court concluded that there existed reasonable grounds, which were known or should have been known to Equatorial Guinea, for France's objection to Equatorial Guinea's designation of the building as premises of its diplomatic mission. In light of these grounds, the Court did not consider that the objection by France was arbitrary in character. Additionally, Equatorial Guinea had not demonstrated that France, in objecting to the designation, had acted in a discriminatory manner.

For these reasons, the Court concluded that the building at 42 avenue Foch in Paris has never acquired the status of 'premises of the mission' under the Vienna Convention, and stated that the acts complained of by Equatorial Guinea could not therefore constitute a breach by France of its obligations under that Convention. Consequently, the Court concluded that it could not uphold Equatorial Guinea's submissions requesting it to declare that France has an obligation to make reparation for the harm suffered by Equatorial Guinea and that France must recognize the status of the building as premises of Equatorial Guinea's diplomatic mission.

International Criminal Court

(1) *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*

On 31 March 2021, the Appeals Chamber of the International Criminal Court delivered its judgment on the Prosecutor's appeal against Trial Chamber I's decision of 15 January 2019, which had acquitted, by majority, Mr. Gbagbo and Mr. Blé Goudé of all charges of crimes against humanity allegedly committed in Côte d'Ivoire in 2010 and 2011. The Appeals Chamber confirmed the decision of the Trial Chamber. The acquittal of Mr. Gbagbo and Mr. Blé Goudé is now final and the Appeals Chamber also revoked all conditions on their release.

In its judgment, the Appeals Chamber rejected, by majority, the Prosecutor's two grounds of appeal, namely that the Trial Chamber's decision to acquit Mr. Gbagbo and Mr. Blé Goudé (i) had violated statutory requirements and (ii) was taken without properly articulating and consistently applying a clearly defined standard of proof and its approach to assessing the sufficiency of the evidence. The Appeals Chamber found, *inter alia*, that, whilst trial chambers should ideally deliver both the verdict and reasons concurrently, a delay between the issuance of a verdict and its reasons cannot necessarily invalidate an entire trial process. There may, on the contrary, be clear justification for such a separation in the particular circumstances of a case; most obviously in this regard is when the liberty

of an acquitted defendant is at stake. The Appeals Chamber also rejected the argument that the two judges of the Trial Chamber who had formed the majority had failed to articulate and consistently apply the standard of proof. The Appeals Chamber noted in this regard that both judges had found that the evidence against the two accused had been ‘exceptionally weak’.

(2) *The Prosecutor v. Bosco Ntaganda*

On 30 March 2021, the Appeals Chamber of the International Criminal Court delivered its judgments confirming the decision of Trial Chamber VI (Trial Chamber) of 8 July 2019, which found Bosco Ntaganda guilty of 18 counts of war crimes and crimes against humanity, committed in Ituri, Democratic Republic of the Congo, in 2002–2003. Furthermore, the Appeals Chamber unanimously confirmed the Trial Chamber’s decision of 7 November 2019, by which Mr. Ntaganda was sentenced to a total of 30 years of imprisonment. The conviction and the sentence are now final.

Mr. Ntaganda and the Prosecutor had appealed the verdict and Mr. Ntaganda appealed the sentencing judgment.

The Appeals Chamber found that Mr. Ntaganda did not demonstrate that his right to a fair trial had been violated and also determined that, in convicting Mr. Ntaganda, the Trial Chamber did not exceed the facts and circumstances described in the charges. The Appeals Chamber also rejected his challenge to the Trial Chamber’s finding that the crimes for which he was found to be criminally responsible were part of an attack directed against a civilian population pursuant to, or in furtherance of, an organizational policy. It further rejected Mr. Ntaganda’s challenge to the Trial Chamber’s findings on indirect co-perpetration. The Appeals Chamber also found that the Trial Chamber provided a reasonable assessment of the evidence regarding Mr. Ntaganda’s knowledge of and intent concerning the crimes of rape and the sexual enslavement of individuals under the age of 15, the recruitment, conscription and use of individuals under the age of 15 in hostilities and in relation to the remaining crimes. The Appeals Chamber also rejected the Prosecutor’s grounds of appeal on the interpretation of the term ‘attack’ in Article 8(2)(e)(iv) of the Rome Statute.

In relation to the appeal against the sentence imposed, the Appeals Chamber rejected Mr. Ntaganda’s challenge to the Trial Chamber’s assessment of his degree of participation in and knowledge of the crimes, including the crime of the sexual enslavement and rape of civilians. Likewise, Mr. Ntaganda’s challenges to the Trial Chamber’s assessment of alleged aggravating circumstances (related to the crime of intentionally directing attacks against civilians) and mitigating circumstances (including the suffering and discrimination that he had endured as a result of his experience in the Rwandan genocide) were also rejected. Notably, with regard to the latter, the Appeals Chamber found that Mr. Ntaganda’s personal experience in the Rwandan genocide could not diminish his culpability given his criminal conduct and the gravity of the crimes for which he was convicted.

(3) *The Prosecutor v. Dominic Ongwen*

On 4 February 2021, Trial Chamber IX of the International Criminal Court found Dominic Ongwen guilty of a total of 61 counts comprising crimes against humanity and war crimes, committed in Northern Uganda between 1 July 2002 and 31 December 2005. The ICC Trial Chamber, found, beyond any reasonable doubt, that Mr. Ongwen was guilty of the following crimes: (i) attacks against the civilian population as such, murder, attempted murder, torture, enslavement, outrages upon personal dignity, pillaging, the destruction of property and persecution, committed in the context of the four specified attacks on the Internally Displaced Persons camps Pajule (10 October 2003), Odek (29 April 2004), Lukodi (on or about 19 May 2004) and Abok (8 June 2004); (ii) sexual and gender-based crimes, namely, forced marriage, torture, rape, sexual slavery, enslavement, forced pregnancy and outrages upon personal dignity that he committed against seven women who were abducted and placed into his household; (iii) a number of further sexual and gender-based crimes committed against girls and women within the Sinia brigade, namely forced marriage, torture, rape, sexual slavery and enslavement; and (iv) the crime of conscripting children under the age of 15 into the Sinia brigade and using them to participate actively in hostilities.

The Chamber found that Dominic Ongwen was fully responsible for all these crimes and did not find evidence that supported the claim that he suffered from any mental disease or disorder during the period relevant to the charges or that he committed these crimes under duress or under any threats. Simultaneously with the issuance of its judgement the Chamber rendered a decision whereby it regulated the further proceedings leading to the imposition of the sentence, including as concerns the submission of evidence by the parties and participants, and the holding of a further hearing in April 2021.

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