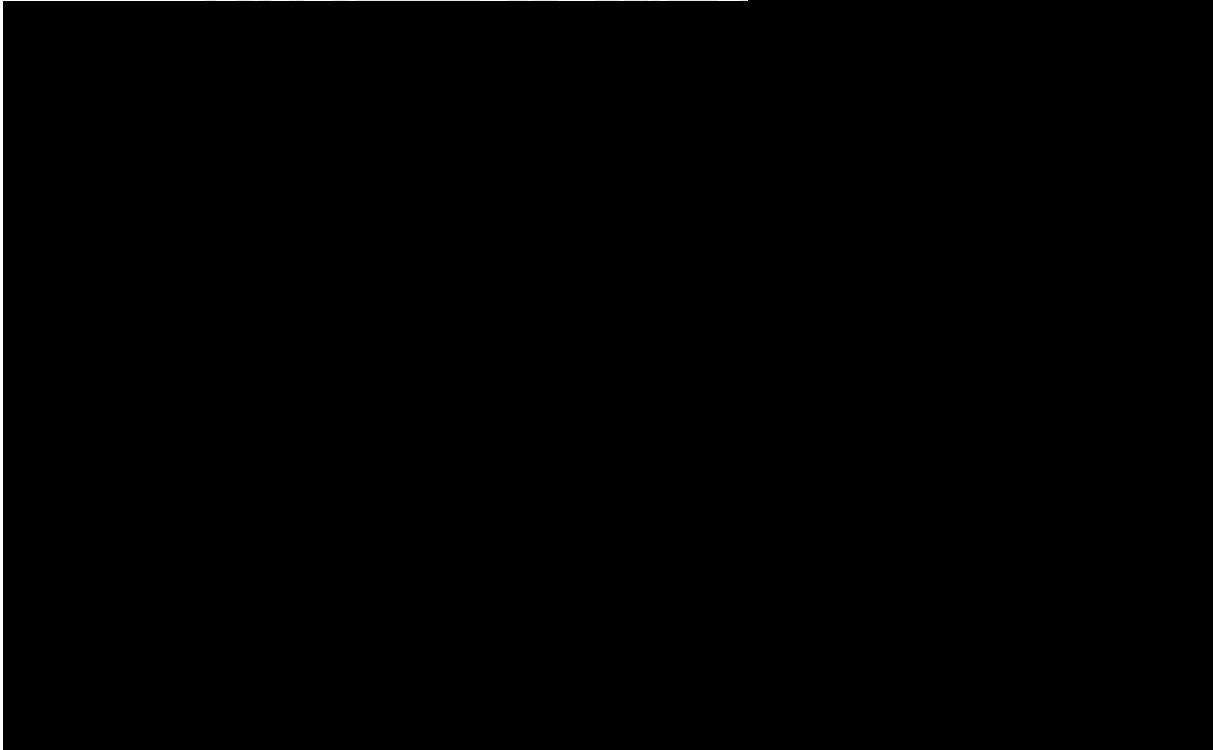


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Judgment No. 2019-UNAT-975



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Counsm1(l4. 50128(1) 'N501405( ) f5. 086321) - 2. 0333(91(r0. 12785156) 'N5014069(M

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8. Article 2314 of the Statute of the United Nations Appeals Tribunal sets out the Tribunal's authority in these circumstances. The Tribunal is



12.



20. The Appeals Chamber finds that the majority's interpretation of the second sentence of paragraph 70 of Resolution 70:27, which states that the Security Council's decision to refer the situation in the Democratic Republic of the Congo to the International Criminal Court was "final and not subject to appeal", is not supported by the text of the resolution. The majority's interpretation is based on a reading of the resolution that is inconsistent with its plain meaning. The majority's interpretation is also inconsistent with the purpose of the resolution, which was to refer the situation in the Democratic Republic of the Congo to the International Criminal Court for investigation and prosecution of the crimes committed in the Democratic Republic of the Congo.

21. The Appeals Chamber finds that the majority's interpretation of the second sentence of paragraph 70 of Resolution 70:27 is also inconsistent with the purpose of the resolution, which was to refer the situation in the Democratic Republic of the Congo to the International Criminal Court for investigation and prosecution of the crimes committed in the Democratic Republic of the Congo. The majority's interpretation is based on a reading of the resolution that is inconsistent with its plain meaning. The majority's interpretation is also inconsistent with the purpose of the resolution, which was to refer the situation in the Democratic Republic of the Congo to the International Criminal Court for investigation and prosecution of the crimes committed in the Democratic Republic of the Congo.







o!7e't of t#e legis(tion\$ (nd t#e intention of t#e legis(ture. T#e )ener(I Assem!ly is t#e legis(ti6e ! r(n'# of t#e United N(tions (nd its resolutions 'onstitute legis(tion.

08. T#e s'#eme of t#e legis(ti6e . ro6isions in Buestion – (s set out initi(ly in Resolution ;0:250 328 \*e'em!er 200G4\$ –#en t#e )ener(I Assem!ly outlined =Tr(nsition(I Me(sures? for t#e tr(nsition from t#e .re6ious intern(I 7usti'e system to t#e 'urrent one –it# t#e \*is. ute Tri!un(I. <n . (r(gr(. #s 05 to 51\$ it dire'ted t#e &'ret(ry-) ener(I to t(>e me(sures ne'ess(ry to redu'e (n e@isting ! ('>log (nd to ensure t#(t t#e intern(I 7usti'e system 'ontinue to fun'tion until t#e 'om. letion of t#e tr(nsition. T#is in'luded its de'ision\$ in . (r(gr(. # 8G\$ t#(t t#ree 7udges !e (. . ointed to t#e \*is. ute Tri!un(I.

05. T#e o!7e't of t#e legis(ti6e . ro6isions (nd t#e intent of t#e )ener(I Assem!ly (re reiter(ated in Resolution 70:27; 322 \*e'em!er 201G4. <n t#is Resolution\$ t#e )ener(I Assem!ly (. . ro6ed t#e =(ddition of four #(lf-time 7udges of t#e t#ree (d litem 7udges to t#e \*is. ute Tri!un(I\$ to !e de. loyed (s reBuired !y '(selo(d (nd (ny (!sen'es (ffe'ting t#e –or> of t#e Tri!un(I?.\$ <n (ddition\$ t#e )ener(I Assem!ly de'idid =to e@tend t#e .ositions of t#e t–o (d litem 7udges in )ene6( (nd N(iro!i (nd t#e 'urrent in'um!ent 7udges Din'luding Judge \*o–ningE\$ t#e nomin(tion of '(ndid(tes !y t#e <ntern(I Justi'e Coun'il (nd t#e (. . ointment of t#e (forementioned four #(lf-time 7udges !y t#e )ener(I Assem!ly\$ –#i'# s#ould t(>e . l('e no l(ter t#(n 01 \*e'em!er 2019?.

0;. <n \*e'ision 70:80GC 310 July 2019\$ t#e )ener(I Assem!ly t#en (. . ointed t#e four #(lf-time 7udges. T#e (. . ointment of t#e 7udges – (s ( tr(nsition(I me(sure until t#e #(lf-time 7udges –ere (. . ointed. +y o. er(tion of t#is \*e'ision (nd t#e Resolution\$ t#e term of t#e 7udges e@. ired –#en t#e #(lf-time 7udges –ere (. . ointed.

07. T#is inter. ret(ion is entirely –it#in t#e ordin(ry (nd gr(mm(ti' (l re(ding of t#e Resolution (nd \*e'ision. Judge \*o–ning's term – (s only e@tended =. ending? or =–#ile – (iting? 3see Merri(m 2e!ster's definition of =. ending?4 t#e (. . ointment of t#e four #(lf-time 7udges –#i'# – (s to o''ur =no l(ter t#(n 01 \*e'em!er 2019?. T#is inter. ret(ion is (so not (n unre(son(!le one (nd (''ords –it# t#e intent of t#e legis(ti6e ! r(n'# (nd t#e 'onte@ (nd o!7e't of t#e legis(ti6e . ro6isions. %n'e t#e #(lf-time 7udges –ere (. . ointed\$ t#e term of t#e 7udges e@. ired. T#is is 'onfirmed !y Arti'le 8314 of t#e \*is. ute Tri!un(I &t(ute\$ –#i'# st(tes

<sup>5</sup>)ener(I Assem!ly resolution 70:27;\$ . (r(. 02 3em. #





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87. The (...) (re dismissed (nd \* is. ute Tri! un(l %rder No. 58 3) 9A:20194 (nd %rder No. 55 3) 9A:20194 (re #ere! y (ffirmed.

%rigin(l (nd Aut#orit(ti6e 9ersion Jnglis#

\* (ted t#is 25<sup>th</sup> d(y of %' to! er 2019 in Ne- Lor>\$ United &t(tes.

)7 0

Judge &(nd#u\$/residing

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Judge , nierim

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Judge Mur. #y

Jntered in t#e Register on t#is 20<sup>th</sup> d(y of \* e' em! er 2019 in Ne- Lor>\$ United &t(tes.

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2ei' #eng "in\$ Registr(r