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BOFAXE



The Prosecutor v. Bosco Ntaganda The Opening of Charges Hearing

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Fokus

On February 10th 2014 Bosco Ntaganda will appear at the ICC for the initial confirmation of charges hearing. This Bofax recaps the charges made against Ntaganda. It questions whether the case will go on trial or cease to have effect. A comparison with the similar and now closed case of "The Prosecutor v. Thomas Lubanga Dyilo" is hereby made.

Quellen:
IStGH, Entscheidung vom 12. Januar 2006, Nr.: ICC-01/04-02/06, Ankläger: Bosco Ntaganda.
IStGH, Entscheidung vom 10.07.2012, Nr.: ICC-01/04-01/06, Ankläger: Thomas Lubanga Dyilo.

The opening of charges hearing of "The Prosecutor v. Bosco Ntaganda" is scheduled on February 10th, 2014 at the International Criminal Court (ICC) in The Hague. Ntaganda is an alleged Congolese war criminal who has been wanted by the ICC since 2006. Ntaganda was a high ranking commander in the conflict taking place in Eastern Congo since 2003. Atrocities committed under the command of Ntaganda have been thoroughly documented by Human Rights Watch and other organizations. He was the leader of the rebel group National Congress for the Defense of the people (CNDP) before being integrated into the Congolese army in 2009. In April 2012, Ntaganda became one of the key figures of one of the conflict parties, named "M23". For reasons yet unknown, Ntaganda voluntarily surrendered at the U.S. embassy in Rwanda and asked to be handed over to the ICC, where he is currently in custody awaiting trial. Article 5 of the Rome Statute lists the crimes within the jurisdiction of the Court: the crime of genocide; crimes against humanity; war crimes; and the crime of aggression. According to Article 25(3)(a) of the Rome Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court. This applies if a person commits one of the above mentioned four types of international crime, whether as an individual, or jointly within a group. Since the Congo has ratified the Rome Statute, liability of the ICC over Ntaganda is established. The Pre-Trial Chamber (PTC) of the ICC has issued two arrest warrants. The first was issued and unsealed on August 22nd 2006; the second six years later on July 13th 2012. The first warrant of arrest charges Ntaganda for three counts of war crimes on the basis of his individual criminal responsibility under article 25(3)(a) of the Rome Statute. These were as follows: (i) the enlistment of children under the age of fifteen; (ii) the conscription of children under the age of fifteen; and (iii) using children under the age of fifteen to participate actively in hostilities. The second warrant of arrest holds Ntaganda accountable under article 25(3)(a) of the Rome Statute for four counts of war crimes (murder; attack against the civilian population; rape and sexual slavery; and pillaging) and three counts of crimes against humanity (murder; rape and sexual slavery; persecution). On March 14th, 2012 Thomas Lubanga Dyilo, another former Congolese warlord, was found guilty by the ICC. He was the very first person to be sentenced by the ICC in accordance with article 76 of the Rome Statute. Lubanga had been charged with the enlisting and conscripting of children under the age of 15 years into the rebel group FPLC and using them to actively participate in hostilities in armed conflict. On July 10th of the same year, he was sentenced to 14 years of imprisonment. Article 78(3) of the Rome Statute (Determination of the sentence) applies when a person has been convicted of more than one crime. In this case the ICC needs to specify a sentence for each crime committed, as well as a joint sentence for the total number of years in imprisonment. The 14 year sentence of Lubanga specifies the joint sentence of the ICC. Lubanga and Ntaganda are said to have been close allies in the Congo War. While each case is specific, Lubanga was charged with and found guilty partially on the exact same grounds as Ntaganda is now held accountable for (i.e. enlistment, conscription and use of child soldiers under the age of fifteen; article 25(3)(a)(i)(ii)(iii) Rome Statute). This leads to the assumption that the initial hearing of charges on February 10th, 2014 will result in the case going on trial. Lubanga was convicted to set an example that crimes listed under article 5 of the Rome Statute are severely punished for those criminally responsible (Article 25(3)(a) Rome Statute). If the facts can be upheld in front of the ICC, anything but the decision by the PTC to let the case go on trial would be an unexpected outcome.

Verantwortung

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