CHRONICLE ON INTERNATIONAL COURTS AND TRIBUNALS (JANUARY - DECEMBER, 2011)

Jorge Antonio Quindimil López*

INTRODUCTION

During 2011, the labour of the International Courts and Tribunals around the world continued to be increasingly relevant for peace, resolving disputes among States, and for justice, fighting against impunity for international crimes. For instance, the President of the ICJ, Judge Hisashi Owada, pointed out that "[i]n the three years of [his] presidency, the docket has never contained less than 15 cases. In fact, in the last ten years, there has been an average of at least 15 cases on the docket, and sometimes as many as 28 cases". It must also be notice that in 2011, for the first time in history, an African woman was elected to be member of the ICJ: Ms. Julia Sebutinde, from Uganda. Otherwise, the Permanent Court of Arbitration received three new members, reaching 115: Albania, Vietnam and Rwanda, the first African State to do so. Then, it is possible to affirm that 2011 will be remembered as a historical year for the commitment of Africa with international justice.

Moreover, very remarkable milestones for international justice in 2011 come from the realm of international criminal law. Regarding *ad hoc* tribunals, the most important news of this year was the detention of all the accused by the ICTY that remained at large; as well as the first case referred to Rwandan national courts by the ICTR. Furthermore, the President of the ICC, Judge Sang-Hyun Song noted that 2011 had been the busiest year of the Court so far, with an increase in the number of country situations, Court hearings, new applications for victim participation as well as for reparations.

* PhD in Law. Associate Professor of Public Internacional Law. University of A Coruña. E-mail: jorge@udc.es.

Finally, it must be noticed that this Chronicle doesn´t deal with those Courts or Tribunals analysed in specific Chronicles, as those related to human rights, Law of the sea or investments (see the *summary* of this *REEI* issue).

INTERNATIONAL JUDICIAL TRIBUNALS

GENERAL JURISDICTION

I. INTERNATIONAL COURT OF JUSTICE (WWW.ICJ-CIJ.ORG)

Judgments

- *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (Georgia v. Russian Federation)*. On 1 April, the Court rendered its Judgment on the preliminary objections raised by the Russian Federation, founding that it has no jurisdiction to decide the dispute. In particular, the ICJ upholds Russian objection based on Article 22 of CERD, which establishes negotiations and the procedures expressly provided for in CERD as preconditions to ICJ jurisdiction. Considering the factual finding that neither of these two modes of dispute settlement was attempted by Georgia, the Court concludes that neither requirement contained in Article 22 has been satisfied, thus this article cannot serve to found the Court's jurisdiction in the present case.
- *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*. On 5 December, the Court issued its Judgement concluding that that Greece, by objecting to the admission of the former Yugoslav Republic of Macedonia to NATO, has breached its obligation under Article 11, paragraph 1, of the Interim Accord of 13 September 1995, because that clause does not permit the Respondent to object to the Applicant's admission to an organization based on the prospect that the Applicant is to refer to itself in such organization with its constitutional name.

Advisory opinions

- *Advisory opinion requested by International Fund for Agricultural Development (IFAD)* in respect of the Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a complaint filed against the IFAD. By an Order dated 24 January, the President of the Court has extended to 11 March 2011: the time-limit within which States and organizations having presented written statements may submit written comments on the other written statements; and the time-limit within which any comments by the complainant in the proceedings against the Fund before the Tribunal may be presented to the Court.

New cases

- *Temple of Preah Vihear (Cambodia v. Thailand)*. On 28 April, the Kingdom of Cambodia filed an Application requesting interpretation of the Judgment rendered on 15 June 1962. The filing of such an application gives rise to the opening of a new case. Together with that Application, Cambodia submitted an urgent request for the indication of provisional measures. In its Application, Cambodia indicates the "points in dispute as to the meaning or scope of the Judgment", as stipulated by Article 98 of the Rules of Court. It states in particular that: "(1) according to Cambodia, the Judgment [rendered by the Court in 1962] is based on the prior existence of an international boundary established and recognized by both States; (2) according to Cambodia, that boundary is defined by the map to which the Court refers on page 21 of its Judgment …, a map which enables the Court to find that Cambodia's sovereignty over the Temple is a direct and automatic consequence of its sovereignty over the territory on which the Temple is situated …; (3) according to the Judgment, Thailand is under an obligation to withdraw any military or other personnel from the vicinity of the Temple on Cambodian territory. Cambodia believes that this is a general and continuing obligation deriving from the statements concerning Cambodia's territorial sovereignty recognized by the Court in that region." Cambodia asserts that "Thailand disagrees with all of these points". Cambodia emphasizes that the purpose of its Request is to seek an explanation from the Court regarding the "meaning and … scope of its Judgment, within the limit laid down by Article 60 of the Statute". It adds that such an explanation, "which would be binding on Cambodia and Thailand, … could then serve as a basis for a final resolution of this dispute through negotiation or any other peaceful means". Cambodia also requested the Court "to indicate the following provisional measures, pending the delivery of its judgment: − an immediate and unconditional withdrawal of all Thai forces from those parts of Cambodian territory situated in the area of the Temple of Preah Vihear; − a ban on all military activity by Thailand in the area of the Temple of Preah Vihear; − that Thailand refrain from any act or action which could interfere with the rights of Cambodia or aggravate the dispute in the principal proceedings".
  By Decision of 18 July, the Court established that both Parties must immediately withdraw their military personnel present in the provisional demilitarized zone defined by it, and refrain from any military presence within that zone and from any armed activity directed at that zone.
  The Court has fixed 8 March 2012 and 21 June 2012 as the respective time-limits for the filing of such explanations by Cambodia and by Thailand.

- *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*. On 22 December, the Republic of Nicaragua instituted proceedings against the Republic of Costa Rica with regard to "violations of Nicaraguan sovereignty and major environmental damages to its territory". Nicaragua contends that Costa Rica is carrying out major construction works along most of the border area between the two countries

with grave environmental consequences. In its Application, Nicaragua claims inter alia that "Costa Rica's unilateral actions . . . threaten to destroy the San Juan de Nicaragua River and its fragile ecosystem, including the adjacent biosphere reserves and internationally protected wetlands that depend upon the clean and uninterrupted flow of the River for their survival". According to the Applicant, "[t]he most immediate threat to the River and its environment is posed by Costa Rica's construction of a road running parallel and in extremely close proximity to the southern bank of the River, and extending for a distance of at least 120 kilometres, from Los Chiles in the west to Delta in the east".

Nicaragua accordingly "requests the Court to adjudge and declare that Costa Rica has breached: (a) its obligation not to violate Nicaragua's territorial integrity as delimited by the 1858 Treaty of Limits, the Cleveland Award of 1888 and the five Awards of the Umpire EP Alexander of 30 September 1897, 20 December 1897, 22 March 1898, 26 July 1899 and 10 March 1900; (b) its obligation not to damage Nicaraguan territory; (c) its obligation under general international law and the relevant environmental conventions, including the Ramsar Convention on Wetlands, the Agreement over the Border Protected Areas between Nicaragua and Costa Rica (International System of Protected Areas for Peace [SI-A-PAZ] Agreement), the Convention on Biological Diversity and the Convention for the Conservation of the Biodiversity and Protection of the Main Wild Life Sites in Central America. Furthermore, Nicaragua requests the Court to adjudge and declare that Costa Rica must: (a) restore the situation to the status quo ante; (b) pay for all damages caused including the costs added to the dredging of the San Juan River; (c) not undertake any future development in the area without an appropriate transboundary Environmental Impact Assessment and that this assessment must be presented in a timely fashion to Nicaragua for its analysis and reaction. Finally, Nicaragua requests the Court to adjudge and declare that Costa Rica must: (a) cease all the constructions underway that affect or may affect the rights of Nicaragua; (b) produce and present to Nicaragua an adequate Environmental Impact Assessment with all the details of the works."

As the basis for the jurisdiction of the Court, the Applicant invokes Article 36, paragraph 1, of the Statute of the Court by virtue of the operation of Article XXXI of the American Treaty on Pacific Settlement of 30 April 1948 ("Pact of Bogotá), as well as the declarations of acceptance made by Nicaragua on 24 September 1929 (modified on 23 October 2001) and by Costa Rica on 20 February 1973, pursuant to Article 36, paragraph 2, of the Statute of the Court. Nicaragua asserts that Costa Rica has repeatedly refused to give Nicaragua appropriate information on the construction works it is undertaking and has denied that it has any obligation to prepare and provide to Nicaragua an Environmental Impact Assessment, which would allow for an evaluation of the works. The Applicant therefore requests the Court to order Costa Rica to produce such a document and to communicate it to Nicaragua. It adds that "in all circumstances and particularly if this request does not produce results, [it] reserves its right to formally

request provisional measures". Finally, Nicaragua also states that as "the legal and factual grounds of the [Application] are connected to the ongoing case concerning Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)", it "reserves its rights to consider in a subsequent phase of the present proceedings . . . whether to request that the proceedings in both cases should be joined".

Pendant cases

- *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua).* On 3 March, the Court issued an order indicating provisional measures, requesting the Parties to refrain from sending to, or maintaining in the disputed territory, including the caño, any personnel, whether civilian, police or security. It authorizes Costa Rica, in certain specific circumstances, to dispatch civilian personnel there charged with the protection of the environment; and it calls on the Parties not to aggravate or extend the dispute before the Court or make it more difficult to resolve.

- *Jurisdictional Immunities of the State (Germany v. Italy)*. On 17 January, Greece requested permission to intervene in the proceedings as a non-party, accepted and granted by the ICJ on 15 July. After holding public hearings, the Court began its deliberation on 16 September.

- *Territorial and Maritime Dispute (Nicaragua v. Colombia).* On 5 May, the Court dismissed both Costa Rican and Nicaraguan applications to intervene in the proceedings. The Court concluded that Costa Rica has not demonstrated that the interest of a legal nature which it has asserted is one which may be affected by the decision in the main proceedings because the Court, when drawing a line delimiting the maritime areas between the Parties to the main proceedings, will, if necessary, end the line in question before it reaches an area in which the interests of a legal nature of third States may become involved. In the case of Honduras, the Court concluded that this State had failed to satisfy the Court that it has an interest of a legal nature that may be affected by the decision in the main proceedings, and that there was accordingly no need for the Court to consider any further questions that have been put before it in the present case.

- *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*. By Order of 22 July, the President of the ICJ extended the time-limit for the filing of the Counter-Memorial of the Republic of Senegal from 11 July 2011 to 29 August 2011.

- *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*. By Order of 23 September, the President of the ICJ fixed 6 December 2011 and 21 February 2012 as the respective time-limits for the filing of the Memorial and the Counter-Memorial on the sole question of compensation due from the Democratic

Republic of the Congo to the Republic of Guinea under paragraphs 163 and 165 (7) of its Judgment of 30 November 2010.

Case removed

- *Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium v. Switzerland)*. Further to a request to such effect from the Kingdom of Belgium, by Order dated 5 April 2011, the Court removed this case from its General List. The Belgian Government explained in particular that it had taken note of the fact that in paragraph 85 of its Preliminary Objections, "Switzerland states . . . that the reference by the [Swiss] Federal Supreme Court in its 30 September 2008 judgment to the 'non-recognizability' of a future Belgian judgment does not have the force of res judicata and does not bind either the lower cantonal courts or the Federal Supreme Court itself, and that there is therefore nothing to prevent a Belgian judgment, once handed down, from being recognized in Switzerland in accordance with the applicable treaty provision".

News

- *Election of new Members*. On 10 November, the General Assembly and the Security Council of the UN elected four Members for a term of office of nine years, beginning on 6 February 2012. Judges Hisashi Owada (Japan), Peter Tomka (Slovakia) and Xue Hanqin (China) were re-elected as Members of the Court. Mr. Giorgio Gaja (Italy) was elected as a new Member of the Court. The election of a fifth Member of the Court could not be concluded, since no candidate obtained a majority in both the General Assembly and the Security Council, and had to be postponed to a later date. Finally, on 13 December, Ms Julia Sebutinde was elected as a new Member, for a term of office of nine years, beginning on 6 February 2012. As a Ugandan jurist, Ms. Sebutinde is the first African woman to sit on the ICJ.

INTERNATIONAL CRIMINAL LAW

II. INTERNATIONAL CRIMINAL COURT (ICC) (WWW.ICC-CPI.INT)

New cases

The Prosecutor v. Laurent Gbagbo. On 30 November, Laurent Gbagbo, national of Côte d'Ivoire, 66 years, arrived at the ICC detention centre in the Netherlands after being surrended on 29 November by the national authorities of Côte d´Ivoire following a warrant of arrest issued under seal by the judges of the Pre-Trial Chamber III on 23 November. Mr Gbagbo allegedly bears individual criminal responsibility, as indirect co-perpetrator, for four counts of crimes against humanity, namely murder, rape and other forms of sexual

violence, persecution and other inhuman acts, allegedly committed in the territory of Côte d'Ivoire between 16 December 2010 and 12 April 2011

The Prosecutor v. Abdelrahim Mohamed Hussein. On 2 December, the Prosecutor of the Luis Moreno-Ocampo requested Pre-Trial Chamber I to issue an arrest warrant against the current Sudanese Defense Minister Abdelrahim Mohamed Hussein for crimes against humanity and war crimes committed in Darfur from August 2003 to March 2004. The evidence allowed the Office of the Prosecutor to conclude that Mr. Hussein is one of those who bears the greatest criminal responsibility for the same crimes and incidents presented in previous warrants of arrest for Ahmed Harun and Ali Kushayb issued by the Court on 27 April 2007. Mr. Hussein was then Minister for the Interior for the Government of Sudan and Special Representative of the President in Darfur, with all of the powers and responsibilities of the President. Mr. Hussein delegated some of his responsibilities to Mr. Harun, the Minister of State for the Interior, whom he appointed to head the "*Darfur Security Desk."*

Pendant cases

The Prosecutor v. Thomas Lubanga Dyilo. This trial, the first opened by the ICC, entered its final stages following the hearing of closing statements that took place from 25 and 26 August. Trial Chamber I will deliberate on the proceedings and, within a reasonable period, will pronounce its decision.

The Prosecutor v. Callixte Mbarushimana. After its detention on 25 January, Pre-Trial Chamber I decided by majority, on 16 December, to decline to confirm the charges in the case of *The Prosecutor v. Callixte Mbarushimana* and to release Mr Mbarushimana from the custody of the Court. The Majority of the Chamber, comprising Judge Sylvia Steiner and Judge Cuno Tarfusser, found that there was not sufficient evidence to establish substantial grounds to believe that Callixte Mbarushimana could be held criminally responsible, under article 25(3)(d) of the Rome Statute, for the eight counts of war crimes and five counts of crimes against humanity brought against him by the Prosecutor. This decision does not preclude the Prosecutor from subsequently requesting the confirmation of the charges against Callixte Mbarushimana if such request is supported by additional evidence. Both the Prosecutor and the Defense may also appeal the decision declining to confirm the charges and the order for the release of Mr Mbarushimana, who was finally released on 23 December.

The Prosecutor v. Abdallah Banda Abakaer Nourain (Abdallah Banda) and Saleh Mohammed Jerbo Jamus (Saleh Jerbo). On 7 March, Pre-Trial Chamber I unanimously decided to confirm the charges of war crimes brought by the ICC's Prosecutor against Abdallah Banda Abakaer Nourain (Abdallah Banda) and Saleh Mohammed Jerbo Jamus (Saleh Jerbo), and committed them to trial.

New situations

Libya. On 3 March, the Prosecutor, Luis Moreno-Ocampo, in accordance with the requirements under the Rome Statute announced the opening of an investigation in Libya. United Nations Security Council Resolution 1970 (2011) provides jurisdiction to the ICC over the situation in Libya since 15 February 2011. As per the Rome Statute, the Prosecutor shall proceed with an investigation unless there is no reasonable basis to believe that crimes falling under the ICC jurisdiction have been committed. On 7 March, the situation in Libya was assigned to Pre-trial Chamber I. On 27 June, this Chamber issued three warrants of arrest respectively for Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi for crimes against humanity (murder and persecution) allegedly committed across Libya from 15 February 2011 until at least 28 February 2011, through the State apparatus and Security Forces. On 22 November, Pre-Trial Chamber I decided to terminate the case against Muammar Mohammed Abu Minyar Gaddafi because of the changed circumstances caused by his death.

Côte d'Ivoire. On 20 May, the Presidency of the ICC assigned the situation in the Republic of Côte d'Ivoire to Pre-Trial Chamber II following the letter of 19 May, by which the Prosecutor informed the President of the Court of his intention to submit a request to the Pre-Trial Chamber for authorisation to open investigations into the situation in Côte d'Ivoire since 28 November 2010. Côte d'Ivoire, which is not party to the Rome Statute, had accepted the jurisdiction of the ICC on 18 April 2003; more recently, and on both 14 December 2010 and 3 May 2011, the Presidency of Côte d'Ivoire reconfirmed the country's acceptance of this jurisdiction. On 3 October, Pre-Trial Chamber III granted the Prosecutor's request to commence an investigation in Côte d'Ivoire with respect to alleged crimes within the jurisdiction of the Court, committed since 28 November 2010, as well as with regard to crimes that may be committed in the future in the context of this situation.

Pendant situations

Kenya. On 8 March, Pre-Trial Chamber II issued the decisions on the applications submitted by the Prosecutor to summon William Samoei Ruto (Ruto), Henry Kiprono Kosgey (Kosgey), Joshua Arap Sang (Sang), Francis Kirimi Muthaura (Muthaura), Uhuru Muigai Kenyatta (Kenyatta) and Mohammed Hussein Ali (Ali) to appear before the Court on 7 April. With respect to the case involving Ruto, Kosgey and Sang, the Chamber found reasonable grounds to believe that Ruto and Kosgey are criminally responsible as indirect co-perpetrators (i.e., committing crimes through another person(s)) in accordance with article 25(3)(a) of the Rome Statute for the crimes against humanity of murder, forcible transfer and persecution committed in some locations in the Republic of Kenya and during the time-frame specified in the Prosecutor's application. The Chamber, however, found that there are not reasonable grounds to believe that Sang is an indirect co-perpetrator, because his contribution to the commission of the crimes was not essential. Instead, the Chamber was satisfied that there were reasonable grounds to believe that Sang otherwise contributed

to the commission of the crimes in accordance with article 25(3)(d) of the Rome Statute. As to the count of torture, the Chamber has not found reasonable grounds to believe that acts of torture were committed. Regarding the case involving Muthaura, Kenyatta and Ali, the Chamber found reasonable grounds to believe that Muthaura and Kenyatta are criminally responsible as indirect co-perpetrators in accordance with article 25(3)(a) of the Rome Statute for the crimes against humanity of murder, forcible transfer, rape, persecution and other inhumane acts. The Chamber, however, found that there are not reasonable grounds to believe that Ali is an indirect co-perpetrator, because his contribution to the commission of the crimes was not essential. Instead, the Chamber was satisfied that there were reasonable grounds to believe that Ali otherwise contributed to the commission of the crimes in accordance with article 25(3)(d) of the Rome Statute. Finally, the Chamber found no reasonable grounds to believe that, in relation to Kisumu and Kibera, the alleged perpetrators committed the said crimes.

On 4 April, Pre-Trial Chamber II received the *Application on behalf of the Government of the Republic of Kenya pursuant to Article 19 of the ICC Statute* (Challenges to the jurisdiction of the Court or the admissibility of a case). On 30 May, Pre-Trial Chamber II rejected the Kenyan Government's challenges to the admissibility of the two cases brought before the Court: *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang* as well as *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*. The suspects had appeared voluntarily before the Chamber on 7 and 8 April 2011, following summonses to appear issued by the judges. On 30 August, the Appeals Chamber confirmed Pre-Trial Chamber II's decisions of 30 May on the admissibility of the cases and dismissed the appeals filed by the Government of Kenya.

News

New ICC Prosecutor.On 1 December, the President of the Assembly of States Parties, Ambassador Christian Wenaweser, and the incoming President of the Assembly, Ambassador Tiina Intelmann, presented the results of the consultations undertaken with the aim of finding a consensus candidate for the post of Prosecutor of the International Criminal Court. On 25 October, the Search Committee for the position of Prosecutor submitted its report to the Bureau, with a shortlist of four candidates. After the release of the report the President of the Assembly, with the assistance of five regional focal points, began a process of consultations over a four week period which included a series of meetings of the New York Working Group of the Bureau, where the four candidates shortlisted by the Search Committee were given the opportunity to present themselves to States Parties. The consultations carried out resulted in an informal agreement among the States Parties to have a consensus candidate, Ms. Fatou B. Bensouda, from The Gambia, nominated for the consideration by the Assembly of States Parties. Ms. Fatou Bensouda will be elected at the tenth session of the Assembly on 12 December 2011, at the United Nations Headquarters, and assume the post on 16 June 2012. Ms. Bensouda was elected Deputy Prosecutor by the Assembly of States Parties on 8 September 2004. She is in charge

of the Prosecution Division of the Office of the Prosecutor. Prior to her election, Mrs. Bensouda worked as a Legal Adviser and Trial Attorney at the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania, rising to the position of Senior Legal Advisor and Head of The Legal Advisory Unit. Before joining the ICTR, she was the General Manager of a leading commercial bank in The Gambia. Between 1987 and 2000, she was successively Senior State Counsel, Principal State Counsel, Deputy Director of Public Prosecutions, Solicitor General and Legal Secretary of the Republic, then Attorney General and Minister of Justice, in which capacity she served as Chief Legal Advisor to the President and Cabinet of The Gambia. Mrs. Bensouda holds a masters degree in International Maritime Law and Law of The Sea and as such is the first international maritime law expert of The Gambia.

New States Parties at the Rome Statute. During 2011, the ratifications of the Rome Statute reached the total number of 120: Republic of Moldova (11 February), Grenada (19 May), Tunisia (24 June), Philippines (30 August), Maldivas (22 September), Cape Verde (13 October) and Vanuatu (5 December).

First ratification of Kampala amendment to article 8. By depositing its instrument of ratification on 26 September, during the annual Treaty Event at UN Headquarters, San Marino became the first State to ratify the amendment to article 8 of the Rome Statute which had been agreed to at the 2010 Review Conference in Kampala. The amendment extends the jurisdiction of the Court to the war crimes of employing certain weapons and substances in armed conflicts not of an international character.

Agreements on enforcement of sentences. On 20 January, Judge Sang-Hyun Song, President of the ICC met with H.E. Snežana Malović, Minister of Justice of the Republic of Serbia, to sign an agreement on the enforcement of sentences, at the seat of the Court in The Hague. On 17 and 18 May, the President of the ICC visited Bogotá, Republic of Colombia, where President Song and President Santos signed an agreement on the enforcement of ICC sentences. Thus Colombia became the first country from Latin American and Caribbean to do so.

Cooperation arrangements. On 18 April, the Secretary General of the Organization of American States (OAS), José Miguel Insulza and the President of the ICC, Judge Sang-Hyun Song met at the OAS headquarters in Washington D.C. to sign an Exchange of Letters for the establishment of a Framework Cooperation Arrangement between the ICC and the General Secretariat of the OAS. The Framework Cooperation Arrangement, which was concluded in accordance with Article 87(6) of the Rome Statute, foresees that the ICC and the General Secretariat of the OAS will cooperate in matters of common interest such as: promotion and dissemination of international criminal law, including the principles, values and provisions of the Rome Statute of the ICC; exchange of information and documents; and reciprocal invitations to conferences and meetings. On 13 July, President Song and Commonwealth Secretary-General Kamalesh Sharma signed a Memorandum of

Understanding to strengthen and develop cooperation between their organisations to jointly support States implementing international criminal law.

Contributions to Trust Fund for Victims. On March 21, the United Kingdom of Great Britain and Northern Ireland announced its contribution of £500,000 to the Trust Fund for Victims (TFV), during the Annual Meeting of the TFV Board of Directors in The Hague, The Netherlands. On 16 December, the Swedish International Development Agency (SIDA) announced a voluntary contribution of 10 million Swedish crowns - approximately 1.1 million Euros - to the Trust Fund for Victims.

New Special Adviser. On 27 May, ICC Prosecutor Luis Moreno-Ocampo announced the appointment of Professor Mireille Delmas-Marty as his Office's Special Adviser on the Internationalization of Legal Issues. Since 2002, Professor Delmas-Marty holds the chair of comparative legal studies and internationalisation of law at the Collège de France. From 1972 to 2002, she was Professor at the Universities of Lille 2, Paris-Sud 11 and Paris 1 Panthéon-Sorbonne. The Office of the Prosecutor's Advisory Council currently includes: Professor Catharine A. MacKinnon Special Adviser on Gender Crimes; Professor MacKinnon, on sexual and gender violence; Professor Juan Méndez Special Adviser on Crime Prevention; Professor Tim McCormack Special Adviser on International Humanitarian Law; Professor Jose Alvarez Special Adviser on International Law; and Benjamin Ferencz Special Counsel to the Office of the Prosecutor and honorary member of the OTP's advisory council, who was the Chief Prosecutor at one of the Nuremberg trials held by the U.S. authorities.

Tenth Session of the Assembly of States Parties. The Assembly of States Parties to the Rome Statute opened its tenth session at UN Headquarters in New York, from 12 to 21 December 2011. The outgoing President of the Assembly, Ambassador Christian Wenaweser (Liechtenstein), underscored some of the achievements of last three years, including the increase in the number of States Parties to 120 and the Kampala Review Conference, but also the challenges lying ahead, especially how to make best use of the Rome Statute system. The Assembly elected Ambassador Tiina Intelmann (Estonia) as President for the tenth to twelfth sessions. It also elected for the same period Ambassadors Ken Kanda (Ghana) and Markus Börlin (Switzerland) as Vice-Presidents and the following other members of the Bureau: Argentina, Belgium, Brazil, Canada, Chile, Czech Republic, Gabon, Finland, Hungary, Japan, Nigeria, Portugal, the Republic of Korea, Samoa, Slovakia, South Africa, Trinidad and Tobago and Uganda. Upon her election, President Intelmann observed that, in the coming years, the Assembly would need to focus on how best to assist the Court in handling its increasing workload, providing it with adequate means and ensuring broad political support. She further reminded States of their important responsibilities under the Rome Statute system, including prosecution of relevant crimes in national courts.

The Assembly elected by acclamation Ms. Fatou Bensouda (Gambia) as the new Prosecutor of the Court for a period of nine years starting from 16 June 2012. Thanking States Parties for the honor bestowed on her, Ms. Bensouda pledged to continue working in close cooperation with the other organs of the Court under the "one Court principle" as well as with the Assembly and civil society and to ensure that the Office of the Prosecutor would carry out its work in a consistent, predictable and transparent manner.

At the second meeting of its tenth session, the Assembly proceeded to elect the following six judges of the International Criminal Court: Anthony Thomas Aquinas Carmona (*Group of Latin American and Caribbean States: Trinidad and Tobago; list A, male)*; Miriam Defensor-Santiago (*Group of Asia-Pacific States: Philippines; list B, female);* Chile Eboe-Osuji (G*roup of African States: Nigeria; list A, male);* Robert Fremr (G*roup of Eastern European States: Czech Republic; list A, male);* Olga Venecia Herrera Carbuccia (*Group of Latin American and Caribbean States: Dominican Republic;* l*ist A, female);* Howard Morrison *(Group of Western European and Other States: United Kingdom; list A, male).* List A judges have established competence in criminal law, while List B judges have competence in relevant areas of international law, such as international humanitarian as well as human rights law. The judges were elected for a term of office of nine years that would commence on 11 March 2012.

III. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (WWW.UN.ORG/ICTY/INDEX.HTML)

Judgments

The Prosecutor v. Vlastimir Đorđević. On 23 February, Trial Chamber II convicted Vlastimir Đorđević, a former senior Serbian police official, of crimes against humanity and war crimes committed against Kosovo Albanian civilians in 1999, and sentenced him to 27 years' imprisonment. Đorđević, former Assistant Minister of the Serbian Ministry of Internal Affairs (MUP) and Chief of its Public Security Department (RJB), was found guilty of participating in a joint criminal enterprise in 1999, whose aim was to change the ethnic balance of Kosovo to ensure Serbian dominance in the territory.

The Prosecutor v. Ante Gotovina, Mladen Markač and Ivan Čermak. On 15 April, Trial Chamber I convicted two Croatian Generals, Ante Gotovina and Mladen Markač, and acquitted one, Ivan Čermak, of charges of crimes against humanity and violations of the laws or customs of war committed by the Croatian forces during the Operation Storm military campaign between July and September 1995. Gotovina, who held the rank of Colonel General in the Croatian army and was the Commander of the Split Military district during the indictment period, and Markač who held the position of Assistant Minister of Interior in charge of Special Police matters, were convicted of persecution, deportation,

plunder, wanton destruction, two counts of murder, inhumane acts and cruel treatment. They were sentenced to 24 and 18 years' imprisonment respectively. They were acquitted of charges of inhumane acts / forcible transfer. Čermak, who was the Commander of the Knin Garrison, was acquitted of all charges. The Chamber found that the crimes took part during an international armed conflict in Croatia and in the context of many years of tensions between Serbs and Croats in the Krajina region where previously a number of crimes had been committed against the Croats.

The Prosecutor v. Florence Hartmann. On 19 July, the Appeals Chamber affirmed the conviction of Florence Hartmann, a former spokesperson for the Tribunal's Prosecutor, for contempt of the Tribunal and upheld the imposition of a 7,000 Euro fine. On 14 September 2009, the Trial Chamber found Hartmann guilty of disclosing the contents, purported effect, and confidential nature of two Appeals Chamber Decisions from the *Prosecutor v. Slobodan Milošević* case in a book and an article authored by her in 2007 and 2008, respectively. She was sentenced to pay a fine of 7,000 Euros, in two installments of 3,500 Euros each.

The Prosecutor v. Momčilo Perišić. On 6 September, the Trial Chamber I convicted Momčilo Perišić, a former Chief of the General Staff of the Yugoslav Army, for crimes against humanity and war crimes committed in Bosnia and Herzegovina and Croatia and sentenced him to 27 years of imprisonment. Perišić, the most senior officer and Chief of the General Staff of the Yugoslav Army (VJ) from 26 August 1993 to 24 November 1998, was found guilty by majority in the Trial Chamber, Judge Moloto dissenting, of aiding and abetting murders, inhumane acts, persecutions on political, racial or religious grounds, and attacks on civilians in Sarajevo and Srebrenica. He was also found guilty, by majority of Judges, Judge Moloto dissenting, of failing to punish his subordinates for their crimes of murder, attacks on civilians and injuring and wounding civilians during the rocket attacks on Zagreb on 2 and 3 May 1995. Perišić was unanimously acquitted of charges of aiding and abetting extermination as a crime against humanity in Srebrenica and of command responsibility in relation to crimes in Sarajevo and Srebrenica. This judgment is the first handed down by the Tribunal in a case against an official of the Federal Republic of Yugoslavia for crimes committed in Bosnia and Herzegovina

The Prosecutor v. Shefqet Kabashi. On 16 September, Shefqet Kabashi was sentenced for contempt of the Tribunal to 2 months of imprisonment. On 26 August 2011, Kabashi pleaded guilty to charges that he knowingly and willfully interfered with the Tribunal's administration of justice by contumaciously refusing or failing to answer questions as a witness in the case of Ramush Haradinaj and others on two occasions in June and November 2007. The Trial Chamber accepted his plea on 31 August 2011, entering a finding of guilt. According to the Prosecution, Shefqet Kabashi has been a key witness in the trial and re-trial of Ramush Haradinaj *et al.* as his testimony relates to the defendants' alleged responsibility for crimes committed at the KLA headquarters and the prison in Jablanica/Jabllanicë

The Prosecutor v. Vojislav Šešelj. On 31 October, Trial Chamber II convicted Vojislav Šešelj of contempt of the Tribunal and sentenced him to 18 months' imprisonment for disclosing confidential information pertaining to protected witnesses in a book he authored. Šešelj, the leader of the Serbian Radical Party, is on trial before the Tribunal for alleged war crimes and crimes against humanity committed between 1991 and 1994 against the non-Serb population from large parts of Bosnia and Herzegovina, Croatia and Vojvodina, Serbia. On 4 February 2010, the Trial Chamber filed an order in lieu of an indictment and initiated contempt proceedings against Šešelj for disclosing, in violation of the Trial Chamber's orders, information on 11 protected witnesses, including their real names, occupations and places of residence, in a book he authored. Šešelj admitted he was the author of the book which was published after decisions granting protective measures were rendered in relation to 10 of the 11 witnesses. Šešelj refused to enter a plea to the charges and a plea of not guilty was entered on his behalf at his further appearance on 6 May 2010. The trial commenced on 22 February 2011 and concluded on 8 June 2011.

The Prosecutor v. Dragomir Pećanac. On 9 December, Trial Chamber II, by majority with Judge Nyambe dissenting, convicted Dragomir Pećanac of contempt of the Tribunal and sentenced him to three months of imprisonment. Dragomir Pećanac, former Security and Intelligence Officer of the Main Staff of the Army of the Republika Srpska, was found guilty of having knowingly and wilfully interfered with the administration of justice by failing to appear before the Chamber as ordered or to show good cause why he could not comply with a subpoena ordering him to appear as a witness in the case of Zdravko Tolimir.

Pendant cases

Ratko Mladić case. On 26 May, Ratko Mladić, General Colonel and former Commander of the Main Staff of the army of the Serbian Republic of Bosnia and Herzegovina/Republika Srpska, was arrested by Serbian authorities. He was indicted by the Tribunal on 25 July 1995, so was a fugitive from justice for almost 16 years. His initial appearance before the Tribunal took place on 3 June. On 13 October, the Trial Chamber denied the Prosecution's request to sever the indictment against the accused, but granted its motion to add to the charges the crimes committed in the village of Bišina, eastern Bosnia and Herzegovina. The Chamber found that granting the Prosecution's motion, filed on 16 August, to conduct two separate trials against the former commander of Bosnian Serb forces, could prejudice the Accused, render the trial less manageable and less efficient, and risk unduly burdening witnesses. On 2 December, the Trial Chamber adopted the Prosecution's proposal to limit its presentation of evidence to a selection of 106 crimes, instead of 196 initially scheduled crimes in Ratko Mladić's indictment. It also adopted the Prosecution proposal to limit the number of municipalities to 15 instead of 23. "In the interests of a fair and expeditious trial, the Chamber fixes the number of crime sites or incidents of the charges in respect of which evidence may be presented by the Prosecution in accordance with the Prosecution Submission", ruled the Trial Chamber.

Goran Hadžić case. On 20 July, Goran Hadžić was arrested in Serbia, the last remaining fugitive who has been at-large for more than seven years. Hadžić, former President of the self-proclaimed Republic of Serbian Krajina, was indicted in 2004 by the Office of the Prosecutor for crimes against humanity and war crimes allegedly committed in eastern Slavonia, Croatia, between 1991 and 1993, including persecutions, murder, imprisonment, torture, inhumane acts, cruel treatment, deportation and wanton destruction. Hadžić was the last remaining fugitive of the total of 161 persons indicted by the Tribunal. His initial appearance before the Tribunal took place on 25 July.

Transfers to serve sentence

On 22 March, *Dragomir Milošević*, a former Bosnian Serb Army General, was transferred to Estonia to serve his 29-year sentence for crimes committed against civilians of Sarajevo during the second half of the 1992-1995 siege of the capital city of Bosnia and Herzegovina. Dragomir Milošević was the commander of the Sarajevo-Romanija Corps (SRK) of the Bosnian Serb Army (VRS) which encircled and entrapped the city of Sarajevo during the three and half year long conflict. Milošević assumed the command of the SRK from his former superior Stanislav Galić in August 1994 and remained in that position over a 15-month period up to the end of the conflict in November 1995.

On 7 July, *Johan Tarčulovski*, a former police officer of the Former Yugoslav Republic of Macedonia (FYROM), was transferred to Germany to serve his 12-year sentence for crimes committed against ethnic Albanians during the conflict in FYROM in 2001. On 19 May 2010, the Appeals Chamber affirmed his conviction of having ordered, planned and instigated crimes committed against ethnic Albanians during a police operation conducted on 12 August 2001 in the village of Ljuboten in the northern part of the FYROM. Tarčulovski was found guilty of the murder of three ethnic Albanian civilians, the wanton destruction of twelve houses or other property and the cruel treatment of thirteen ethnic Albanian civilians.

On 10 November, Ljubomir Borovčanin, former Deputy Commander of the Republika Srpska Ministry of Internal Affairs (MUP) Special Police Brigade, was transferred to Denmark to serve his 17-year sentence for crimes committed against Bosnian Muslims during and following the fall of the Srebrenica and Žepa enclaves in July 1995, in Bosnia and Herzegovina. Borovčanin was one of seven former high-ranking Bosnian Serb military and police officials convicted in the *Popović et al.* case. The Trial Chamber rendered its judgement in the case on 10 June 2010 and convicted Borovčanin of aiding and abetting extermination, murder, persecution and forcible transfer. Borovčanin was also found guilty on the basis of command responsibility of murder as a crime against humanity and as a violation of the laws and customs of war, for failing to punish his subordinates who took part in the killing of prisoners in front of the warehouse in Kravica. Borovčanin was the only accused in the case not to appeal his 17-year sentence.

News

Terms of ICTY Judges extended. On 29 June, the Security Council's decision to extend the terms of office of 17 of its judges, which represents a meaningful step in support of the successful completion of the Tribunal's strategy. The Security Council's resolution, which was adopted unanimously, extends the terms of office of eight permanent and nine*ad litem* judges until 31 December 2012 or until the completion of the cases to which they are assigned, if sooner.

Prosecutor reappointed. On 14 September, the United Nations Security Council, in its Resolution 2007 (2011), adopted unanimously, reappointed Serge Brammertz as Prosecutor of the International Tribunal for the former Yugoslavia (ICTY) until 31 December 2014.

New President and Vice-Presicent of the ICTY elected. On 19 October, in a special plenary, the judges of the ICTY elected, by acclamation, Judge Theodor Meron (United States of America) as President of the Tribunal and Judge Carmel Agius (Malta) as Vice-President for a two year term starting November 17, 2011, to succeed President Patrick Robinson and Vice-President O-Gon Kwon.

Death of Antonio Cassese, the first President of the ICTY. On 23 October, the Tribunal declared its deep regret about the news of the death of Judge Antonio Cassese, of the Special Tribunal for Lebanon and a leading figure in the development of international humanitarian law. Judge Cassese was the first president of the ICTY serving in this capacity from 1993 to 1997. In his judicial capacity he played a foundational role in elaborating the jurisdictional bases for the work of the Tribunal. This was only one of the many roles he played in various international institutions dedicated to the fight against impunity and human rights.

President and Prosecutor of the ICTY present report on completion strategy before the UN Security Council. ICTY Prosecutor Serge Brammertz addressed the UN Security Council, delivering the 16th report on the progress of his Office (OTP) towards the completion of its mandate. At the outset the Prosecutor said that the major development in the last reporting period was the arrest of the Tribunal's last fugitive, Goran Hadžić, which took place on 20 July 2011. With his arrest, none of the 161 persons indicted by the ICTY remain at large. The Prosecutor said that the arrests of Ratko Mladić and Goran Hadžić meant that "*no individual has ultimately escaped the ICTY's reach and the final impediment to completing our mandate has been removed*". The Prosecutor paid particular attention to the role of the international community that "*maintained pressure and provided positive incentives forSerbia to choose accountability over impunity and the rule of law over misplaced loyalty to war criminals*". The Prosecutor also touched upon the OTP's preparations for the Residual Mechanism, stressing that the OTP continued working together with ICTY Registry and the ICTR Office of the Prosecutor to facilitate a smooth transition into a small and efficient Residual Mechanism.

On 8 December, President Meron addressed the United Nations Security Council to provide an update on the achievements and work of the Tribunal and the efforts undertaken to ensure that the Tribunal completes its work in an expeditious manner. In his first address to the Security Council since assuming the position of President in November 2011, Judge Meron paid tribute to the achievements of his predecessor, Judge Patrick Robinson, adding that he *"significantly strengthened the ICTY."* In particular, President Meron commended Judge Robinson's initiative in establishing a Victim's Trust Fund. The President brought to the Security Council's attention the significant successes achieved by the Tribunal, in particular the recent arrests of Goran Hadžić and Ratko Mladić. He underscored that these arrests mean that the Tribunal has arrested all living individuals indicted for substantive offences under the Statute. The President also highlighted the Tribunal's contribution to the development of international criminal law and assistance to the national judiciaries in the former Yugoslavia. Turning to the current state of affairs at the Tribunal, of the 15 cases currently ongoing, two are in a pre-trial phase, seven at trial, and six at the appeal stage. The President informed the Security Council that trial judgements in the cases of Prlić *et al.*, Vojislav Šešelj, Stanišić and Simatović, Stanišić and Župljanin, Tolimir, and Haradinaj *et al.* will be issued in 2012, and that the judgement in the case of Radovan Karadžić should be rendered during 2014. The appeals judgement in the Lukić and Lukić case is expected to be delivered in 2012, with a further five appeals judgements. With respect to the trials of Ratko Mladić and Goran Hadžić, the President assured the Security Council that "*[a]ll efforts will be made to complete their trials prior to December 2014*" and that the appeals proceedings will be conducted by the Residual Mechanism.

IV. INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (ICTR) (WWW.ICTR.ORG)

Judgments

Trial Chambers

The Prosecutor v. Jean-Baptiste Gatete. By Judgement of 29 March, Trial Chamber III sentenced Jean-Baptiste Gatete, former Mayor of Murambi Commune in Byumba prefecture and, in April 1994, Director in the Rwandan Ministry of Women and Family Affairs, to life imprisonment. The Chamber found Gatete guilty of genocide and extermination as a crime against humanity. The accused had been charged with six counts: genocide, or, in the alternative, complicity in genocide, conspiracy to commit genocide, and the crimes against humanity of extermination, murder and rape.

The Prosecutor v. Augustin Bizimungu, François-Xavier Nzuwonemeye, Innocent Sagahutu and Augustin Ndindiliyimana. By Judgement of 17 May, Trial Chamber II convicted Augustin Bizimungu, François-Xavier Nzuwonemeye, Innocent Sagahutu and Augustin

Ndindiliyimana in the 'Military II' trial. It subsequently sentenced Bizimungu to 30 years in prison and Nzuwonemeye and Sagahutu each to 20 years imprisonment while Ndindiliyimana was sentenced to time served since he was arrested in Belgium on 29 January 2000. Following this the Chamber ordered Ndindiliyamana's immediate release and requested the Registry to make the necessary arrangements.

The Prosecutor v. Pauline Nyiramasuhuko et alia (Butare case). On 24 June, Trial Chamber II convicted all the six accused persons in what is called the Butare case including the first woman to be charged of genocide, Pauline Nyiramasuhuko, the former Minister of Family and Women's Development. The Chamber sentenced Nyiramasuhuko to life in prison for conspiracy to commit genocide, genocide, crimes against humanity (extermination, rape, and persecution), and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto (violence to life, and outrages upon personal dignity). The Trial Chamber also sentenced her son, Arsène Shalom Ntahobali, a former student, and Elie Ndayambaje, a former Bourgmestre of Muganza to life in prison. Arsène Shalom Ntahobali was found guilty of genocide, crimes against humanity (extermination, rape, and persecution), and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto (violence to life, and outrages upon personal dignity), while Ndayambaje was found guilty of genocide, direct and public incitement to commit genocide, crimes against humanity (extermination and persecution), and violence to life as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II thereto.

The Prosecutor v. Justin Mugenzi et alia (Government II case). On 30 September, Trial Chamber II delivered its Judgement concerning the four Accused in the "Government II" case, convicting both Justin Mugenzi and Prosper Mugiraneza for conspiracy to commit genocide and direct and public incitement to commit genocide. They were each sentenced to 30 years of imprisonment. Casimir Bizimungu and Jérôme-Clément Bicamumpaka were acquitted, and the Trial Chamber ordered their immediate release. Judge Short appended a partially dissenting opinion, finding that there was undue delay in the trial that warranted a five-year reduction in Mugenzi's and Mugiraneza's sentences. Mugenzi and Mugiraneza were convicted of conspiracy to commit genocide for their participation in the decision to remove Butare's Tutsi Prefect, Jean-Baptiste Habyalimana. Based on their participation in a joint criminal enterprise at the subsequent installation ceremony where President Théodore Sindikubwabo gave an inflammatory speech inciting the killing of Tutsis, the Trial Chamber convicted Mugenzi and Mugiraneza of direct and public incitement to commit genocide.

The Prosecutor v. Grégoire Ndahimana. On 17 November, Trial Chamber III found Grégoire Ndahimana, former Mayor of Kivumu Commune in Kibuye Prefecture, guilty of genocide and extermination as a crime against humanity. It then sentenced him to fifteen years in prison. The Chamber found Ndahimana guilty of genocide and extermination by aiding and abetting as well as by virtue of his command responsibility over communal

police in Kivumu. The Trial Chamber unanimously dismissed the other count of complicity in genocide

Appeals Chamber

The Prosecutor v. Tharcisse Muvunyi. By Judgement of 1 April, the Appeals Chamber affirmed the conviction and sentence of Tharcisse Muvunyi, a former Lieutenant Colonel in the Rwand Armed Forces. On 11 February 2010, Trial Chamber III convicted Muvunyi of direct and public incitement to commit genocide based on his statements made at a public meeting at the Gikore Trade Center and sentenced him to 15 years of imprisonment.

The Prosecutor v. Tharcisse Renzaho. By Judgement of 1 April, the Appeals Chamber reversed two of Tharcisse Renzaho's convictions but affirmed his sentence of imprisonment for the remainder of his life in view of the gravity of the convictions affirmed. On 14 July 2009, Trial Chamber I found Renzaho guilty of genocide, murder and rape as crimes against humanity, and murder and rape as serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II. The Trial Chamber sentenced Renzaho to life imprisonment. The Appeals Chamber reversed Renzaho's convictions for genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II in relation to the rapes of Witnesses AWO and AWN, and Witness AWN's sister. The Appeals Chamber also reversed Renzaho's conviction for genocide for ordering the killing of Tutsi civilians at roadblocks in Kigali, but affirmed Renzaho's convictions for genocide for aiding and abetting killings of Tutsis at roadblocks in Kigali; genocide for ordering and aiding and abetting killings at CELA on 22 April 1994; murder as a crime against humanity for ordering and aiding and abetting the killing of Charles, Wilson, and Déglote Rwanga on 22 April 1994 and for his superior responsibility under Article 6(3) of the Statute of the Tribunal in relation to the killing of other mostly Tutsi men removed from CELA on 22 April 1994; genocide in relation to the killing of hundreds of Tutsi refugees at Sainte Famille on 17 June 1994; and for murder as a serious violation of Article 3 common to the Geneva Conventions and of Additional Protocol II for ordering the killing of at least 17 Tutsi men at Sainte Famille on 17 June 1994.

The Prosecutor v. Ephrem Setako and Yussuf Munyakazi. By Judgement of 28 September, the Appeals Chamber confirmed the convictions and sentences of Lieutenant Colonel Ephrem Setako, former head of the Division of Legal Affairs in the Ministry of Defence, and Yussuf Munyakazi, former landowner and farmer in Bugarama, Cyangugu. Setako and Munyakazi were convicted on 25 February and 30 June 2010, respectively, and sentenced to 25 years in prison by Trial Chamber I.

The Prosecutor v.Théoneste Bagosora and Anatole Nsengiyumva. On 14 December, the Appeals Chamber delivered its judgement on the appeals lodged by Théoneste Bagosora and Anatole Nsengiyumva, reversing a number of their convictions and reducing their life

sentences to 35 and 15 years of imprisonment, respectively. On 18 December 2008, Trial Chamber I found Bagosora and Nsengiyumva guilty of genocide, crimes against humanity, and serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol II for crimes committed in April and June 1994 in Kigali, Gisenyi, and Kibuye prefectures

The Prosecutor v. Dominique Ntawukulilyayo. On 14 December, the Appeals Chamber affirmed the conviction for aiding and abetting genocide of Dominique Ntawukulilyayo, but reduced his sentence. On 3 August 2010, Trial Chamber III convicted Ntawukulilyayo of genocide for ordering, as well as aiding and abetting, the killings of Tutsi civilians at Kabuye hill, Butare prefecture, in April 1994. The Trial Chamber sentenced Ntawukulilyayo to 25 years of imprisonmen

Pendant cases

The Prosecutor v. Ildephonse Nizeyimana. The trial began on 17 January. Nizeyimana is alleged to have planned, incited to commit, ordered, committed, or in some other way aided and abetted the planning, preparation of executions he is charged with. He is also alleged to have known, or had reason to know, that his subordinates were preparing to commit or had committed one or more of the crimes and failed to take the necessary and reasonable measurers to prevent the said acts from being committed or to punish those who were responsible. The Prosecution, in its opening remarks, told the Trial Chamber that it will present evidence to prove that the accused was among key officers of the Rwanda Armed Forces who played crucial roles in the implementation of genocide from its inception through to its conclusion. In response, Defence Counsel John Philpot (Canada) told the Trial Chamber that he will contest all the factual allegations against the accused. He added that Nizeyimana was not influential as alleged and was not the *de facto* Commander of ESO. Actually he said the war in Rwanda was not a war against Tutsi, and it has never been. Rather the war was with an army with a political mission.

New cases

On 25 May, the ICTR Prosecutor, Justice Hassan Bubacar Jallow, announced the arrest in the Democratic Republic of Congo (DRC) of ICTR fugitive Bernard Munyagishari (52), former President of the *Interahamwe* for Gisenyi, who was arrested in an operation mounted by the DRC Armed forces, in collaboration with the Office of the Prosecutor (OTP) Tracking Unit in Kachanga, North Kivu. Munyagishari is wanted by the ICTR on charges of genocide and crimes against humanity, including rape. The accused is alleged to have recruited, trained and lead *Interahamwe* militiamen in mass killings and rapes of Tutsi women in Gisenyi and beyond, between April and July 1994

Referrals to Rwanda jurisdiction

On 17 January, Trial Chamber III decided decided that proceedings in relation to motions filed, under Rule 11 bis, by the Prosecution for referral of cases against Charles Sikubwabo and Fulgence Kayishema to the authorities of the Republic of Rwanda, including the appointment of Counsel for the accused, shall be deferred until the Accused are arrested or until a final decision has been made in relation to another request in the case of Jean-Bosco Uwinkindi, whatever comes first.

However, on 28 June, the ICTR referred the case of *Jean Uwinkindi* to the Republic of Rwanda to be tried in the Rwandan national court system under Rule 11 *bis*, marking the first time in the Tribunal's history it has done so. While previous Referral Chambers were not inclined to grant similar applications that had been placed before them, this Chamber was convinced based on the evidence that Rwanda possesses the ability to accept and prosecute Uwinkindi's case. The Chamber expressed its solemn hope that the Republic of Rwanda would actualize in practice the commitments it made in its filings about its good faith, capacity and willingness to enforce the highest standards of international justice. In reaching its decision, the Chamber noted that Rwanda had made material changes in its laws and had indicated its capacity and willingness to prosecute cases referred by the ICTR adhering to internationally recognised fair trial standards enshrined in the ICTR Statute and other human rights instruments. In particular, the Chamber found that the issues which concerned previous Referral Chambers, namely the availability of witnesses and their protection, had been addressed to some degree in the intervening period. The Referral Chamber also requested that the Registrar appoint the African Commission on Human and Peoples' Rights to monitor Uwinkindi's trial in Rwanda and determined that the ACHPR would bring to the attention of the ICTR President any potential issues that may arise throughout the course of the proceedings. The Chamber emphasised its authority under Rule 11 bis to revoke the case from Rwanda as a last resort if necessary.

News

New President of the ICTR. On 25 May, Judge Khalida Rachid Khan (Pakistan) was elected President ICTR effective from 27 May 2011 for a period of two years. Judge Khan, who was presiding Judge of Trial Chamber III, has been Vice-President of the Tribunal since 29 May 2007. She replaces Judge Dennis Byron (St. Kitts and Nevis), former President of the Tribunal since 29 May 2007, whose tour of duty expires on 26 May 2011. Judge Byron has been elected Vice-President. Judge Khan has been a judge at the Tribunal since August 2003. Prior to joining the Tribunal, she served as a Senior Puisine Judge on the High Court of Peshawar where she was the first Pakistan woman ever appointed to that position. She began her career as a civil judge in 1974 and later became Solicitor to the Government of the North-West Frontier Province of Pakistan. She was also the first woman to be appointed as Sessions Judge in the Indian subcontinent. Judge Byron arrived at the Tribunal in June 2004 and is a member of Trial Chamber III. Prior to joining the Tribunal, he served as

Judge and later Chief Justice of the Eastern Caribbean Supreme Court. He began his career in private practice as a Barrister in 1966. In 2000, Judge Byron was conferred the honour of Knight Bachelor by Her Majesty Queen Elizabeth II. In 2004, he was appointed a member of the Privy Council (UK). However, s August, Judge Vagn Joensen (Denmark) was elected Vice President replacing Judge Dennis Byron (St. Kitts and Nevis) who had been appointed President of the Caribbean Court of Justice (CCJ). Judge Joensen joined the Tribunal in May 2007 as *ad litem* Judge and member of Trial Chamber III. Before joining the Tribunal, Judge Joensen was Judge at the Danish High Court, Eastern Division, in Copenhagen since 1994 and served as an international judge for the UNMIK in Kosovo from 2001 to 2002

V. SPECIAL COURT FOR SIERRA LEONE (SCSL) (WWW.SC-SL.ORG)

Pendant cases

The Prosecutor v. Charles Taylor. On 11 March, the Parties finished the presentation of their closing arguments. Then the Court commenced its deliberation.

The Prosecutor v. Ibrahim Bazzy Kamara et alia. On 7 June, five persons were served with "orders in lieu of an indictment" charging them with contempt of court under Rule 77(A) of the Rules. They are alleged to have interfered with Prosecution witnesses who testified in two separate trials before the Special Court. Two convicted former leaders of the Armed Forces Revolutionary Council, Ibrahim Bazzy Kamara and Santigie Borbor Kanu (AKA: "Five-Five"), were given the indictment at Rwanda's Mpanga Prison, where they are serving lengthy sentences for war crimes and crimes against humanity. Charged with Kamara and Kanu are Hassan Papa Bangura (AKA: "Bomblast") and Samuel Kargbo (AKA "Sammy Ragga), resident in Sierra Leone. All four are charged with two counts of attempting to bribe a witness to recant his previous testimony.

News

President and Vice President reelected. On 9 June, Justice Jon M. Kamanda of Sierra Leone was elected unanimously to a third term as Presiding Judge of the Appeals Chamber and President of the Special Court for Sierra Leone. He is expected to hold that office until the end of the Court's mandate in 2012. Justice Kamanda's re-election took place during the 15 the Plenary of Judges in The Hague late last month. Justice Emmanuel Ayoola of Nigeria was also re-elected as Special Court Vice President and Staff Appeals Judge.

Judge of the SCSL to ICJ. On 13 December, Justice Julia Sebutinde, a Judge of the Special Court's Trial Chamber II, was elected to a seat on the International Court of Justice (ICJ).

She was elected to a nine-year term on Tuesday afternoon, after she received an absolute majority of votes in both the UN General Assembly and the Security Council.

VI. EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (ECCC) (WWW.ECCC.GOV.KH)

Judgements

Pendant cases

Case 002. On 13 January, the Pre-Trial Chamber confirmed and partially amended the indictments against the Accused Persons Ieng Sary, Ieng Thirith, Khieu Samphan and Nuon Chea. The Pre-Trial Chamber ordered the Accused to be sent for trial and to continue to be held in provisional detention until they are brought before the Trial Chamber. The indictments include charges of crimes against humanity, genocide, grave breaches of the 1949 Geneva Conventions and murder, torture and religious persecution as defined by the 1956 Cambodian Penal Code.

On 16 February, the Trial Chamber rejected Defence applications seeking the immediate release of the Accused Persons Nuon Chea, Khieu Samphan and Ieng Thirith. The Pre-Trial Chamber ordered the Accused Persons to remain in provisional detention until they were brought before the Trial Chamber in a decision without reasoning rendered on 13 January. The Pre-Trial Chamber subsequently issued reasoning for the continued detention on 21 January. Following the decision of the Pre-Trial Chamber, the Accused Persons filed applications for their immediate release to the Trial Chamber. The Trial Chamber conducted an oral hearing related to the applications on 31 January.

On 17 November, the Trial Chamber issued its Decision on Accused IENG Thirith's fitness to stand trial. This decision indicates that the Trial Chamber agreed that the Accused IENG Thirith is currently unfit to stand trial. IENG Thirith was diagnosed as suffering from a progressive, degenerative illness. The Trial Chamber therefore unanimously considered it to be in the interests of justice to sever the charges against the Accused IENG Thirith in Case 002 pursuant to Internal Rule 89ter and to stay the proceedings against her. On 13 December, the Supreme Court Chamber of the ECCC granted by supermajority decision an immediate appeal from the Co-Prosecutors, thereby setting aside an order to unconditionally release the Accused Ieng THIRITH issued by the Trial Chamber on 17 November. The Supreme Court Chamber found that the Trial Chamber must exhaust all available measures potentially capable of helping the Accused to become fit to stand trial. Such decision was adopted in the light of the possibility, albeit slight, of a meaningful improvement in the mental health of the Accused which was foreseen by the medical experts appointed by the Trial Chamber. In a situation where the stay of proceedings may

be lifted, the Supreme Court Chamber found that unconditional release of an accused is not required. The Supreme Court Chamber concluded that the original ground for keeping the Accused in provisional detention, namely to ensure her presence during the proceedings, remains valid and relevant.

News

Ninth Session of the ECCC Plenary. The Ninth Session of the ECCC Plenary took place from 21 to 23 February. The Plenary considered proposals to amend its Internal Rules in order to promote efficient trial management and more expeditious trial proceedings. By the close of Plenary, five proposed amendments to the Internal Rules were adopted, a number of which related to the Trial Chamber. These included adapting the rule on admissibility of an application on the disqualification of a Trial Chamber Judge. Further rule amendments were approved regarding the ability of an accused to attend before the Chamber in person and the continuation of trial proceedings in the interests of justice. One of the provisions allows that where due to ill health or other serious concerns, an accused cannot attend the Chamber, the Chamber may continue proceedings in the absence of the Accused with his or her consent, or where the absence causes substantial delay to proceedings and the interests of justice so require, order the Accused's participation by audio-visual means. A new provision was adopted allowing the Trial Chamber when required in the interests of justice, to order the separation of proceedings, and the separation of charges, in relation to one or more accused. The Plenary adopted an amendment allowing the Office of Administration to designate a lawyer where both Civil Party Lead Co-Lawyers are temporarily unable to carry out their functions.

*Tenth Session of the ECCC Plenary.*The Tenth Plenary Session of the ECCC met from 1 to 3 August. The Plenary considered proposals to amend its Internal Rules in order to promote efficient trial management and more expeditious trial proceedings. By the close of the Plenary, several proposed amendments to the Internal Rules were adopted. The Internal Rules relating to immediate appeals to the Supreme Court Chamber were amended to include provisions requiring the Supreme Court Chamber to issue a decision with a summary of its reasons within three months. In relation to immediate appeals against Trial Chamber decisions which have the effect of terminating proceedings, the Supreme Court Chamber may, in exceptional circumstances, extend the period for issuing such decisions by a further month. If the Supreme Court Chamber does not issue a decision within the limited time prescribed or if it is unable to reach a super-majority on any immediate appeal, the decision of the Trial Chamber becomes final. The rule on conducting an inquiry into the cause of death of a person in custody was amended so that the performance of an autopsy is not mandatory, in compliance with Cambodian practice and applicable rules at international criminal tribunals. A further rule amendment concerned the rule relating to the Judicial Administration Committee, which will now meet at the initiative of the President instead of on a monthly basis. Modifications were made to the Practice Directions

concerning the filing of documents and editorial changes were also made to the Appeals Provisions in order to harmonize the three languages of the ECCC Internal Rules.

New financial contributions to ECCC. During 2011, Japan pledged two new contributions of USD 11,705,975 and USD 2,9 million, respectively. Japan is the single largest donor to the ECCC and has so far donated a total of USD 70.57 million, nearly half of the total budget. United Kingdom contributed £1.000.000, Norway NOK 6.000.000, Australia AUD 2.000.000. The total budget for the period 2010-2011 was reduced by USD 15.1 million. The revised budget amounted to US$ 71.96 million in total, with the following breakdown: National Component International Component; 2010 USD 7.9 million USD 23.4 million; 2011 USD 9.9 million USD 30.8 million; Total USD 17.8 million USD 54.2 million.

New national co-lawyer. In November, Dr. Sa Sovan, the Cambodian Co-Lawyer for Khieu Samphan, withdrew from his position with agreement from his client. Dr. Sa was replaced by Mr. Kong Sam Onn. Mr. Kong is an experienced human rights lawyer who has represented individuals in many high-profile criminal cases in Cambodia. He is a Lecturer of Law at Pañña sastra University of Cambodia and a Ph.D candidate at Nagoya University, Japan. He holds a Master's Degree in Law from the University of Hong Kong. He was formerly a senior manager at the Cambodian Defenders Project.

New international co-lawyer. On 13 December, upon a request made by Khieu Samphan, the Defence Support Section assigned Mr. Arthur Vercken as Foreign Co-Lawyer representing Khieu Samphan in Case 002 proceedings before the Extraordinary Chambers in the Courts of Cambodia. Mr. Vercken is a French defence lawyer with extensive experience in international criminal law. He previously represented Jean Mpambara and Callixte Kalimanzira at the ICTR.

VII. SPECIAL TRIBUNAL FOR THE LEBANON (STL) (WWW.STL-TSL.ORG)

Procedural incidents

Indictments and international arrest warrants. On 17 January, the Prosecutor, Daniel A. Bellemare, filed a confidential indictment in connection with the attack on former Lebanese Prime Minister Rafiq Hariri and others on 14 February 2005. The indictment was filed with the Tribunal's Registrar, who will submit it to the Pre-Trial Judge. The indictment marks the beginning of the judicial phase of the Tribunal's work. On 11 March, as a result of the gathering and analysis of further evidence, the Prosecutor of the Special Tribunal for Lebanon, Daniel A. Bellemare, filed an amended indictment for confirmation by the Pre-Trial Judge. This amendment expands on the scope of the indictment filed on 17 January. The possibility for the Prosecutor to amend an indictment, without leave, at any time before its confirmation, is specifically provided for by Rule 71A (i) of the

Tribunal's Rules of Procedure and Evidence. The Prosecutor had submitted that the Pre-Trial Judge's Order of 19 January on non-disclosure of the confidential indictment should apply equally to the amended indictment and supporting materials. Their unauthorized disclosure could, therefore, be considered as interference with the Tribunal's administration of justice amounting to contempt of the Tribunal in violation of Rule 60 bis (A). On 6 May, the Prosecutor filed a new amended indictment, replacing the indictment of 11 March, to include substantive new elements unavailable until recently. The Prosecutor does not intend to make further amendments to the indictment, unless ordered to do so by the Pre-Trial Judge. Other indictments could, however, be filed in the future if warranted by the evidence. "The amendment of an indictment or the filing of new indictments is and will continue to be guided solely by the evidence uncovered by the ongoing investigation", the Prosecutor stated.

On 28 June, the Pre-Trial Judge, Daniel Fransen, confirmed the indictment relating to the assassination of Rafiq Hariri and others. The indictment and accompanying arrest warrant(s) were transmitted to the Lebanese authorities on 30 June. This announcement follows a declaration by the Lebanese authorities that they have received a confirmed indictment. The confirmation of the indictment means that Judge Fransen is satisfied that there is *prima facie* evidence for this case to proceed to trial. This is not a verdict of guilt and any accused person is presumed innocent unless his or her guilt is established at trial. At this time, the STL has no comment on the identity or identities of the person or persons named in the indictment. Indeed, Judge Fransen has ruled that the indictment shall remain confidential in order to assist the Lebanese authorities in fulfilling their obligations to arrest the accused. UN Security Council Resolution 1757 and the provisions of its annexes are clear on the steps that must be taken by the Lebanese authorities. These include the service of the indictment on the accused person or persons, their arrest and detention, as well as their transfer to the STL. Under the STL's Rules of Procedure and Evidence, the Lebanese authorities have to report to the STL on the measures that they have taken to arrest the accused, at least within 30 days of the submission of the indictment.

On 11 July, the Pre-Trial Judge, Daniel Fransen, issued on Friday 8 July internationalarrest warrants against the accused in the 14 February 2005 attack in which the former Lebanese Prime Minister, Rafik Hariri and many others were killed. The Tribunal has requested Interpol to notify all States of the arrest warrants. This follows a request from STL Prosecutor Daniel A. Bellemare. Judge Fransen's decision authorised the Office of the Prosecutor to provide Interpol with the necessary information to issue a "red notice" against each accused. The issuing of international warrants comes after the confirmation of an indictment and its transmission along with domestic arrest warrants to the Lebanese authorities on 30 June 2011. The confirmation of that indictment means that the Pre-Trial Judge has ruled that there is sufficient evidence for the case to proceed to trial. The indictment remains confidential, and at this stage the STL has no comment to make about the identity of those accused.

On 29 July, the Lebanese people learned the details of those accused of the attack that claimed the lives of 22 people, including former Prime Minister Rafik Hariri. The decision of the Pre-Trial Judge to lift the confidentiality of his Order of 28 June 2011 in part, has allowed the publication of the names, photographs and biographical data of the accused named in the indictment and the charges made against them. In the words of the Prosecutor, "This step has been taken to increase the likelihood of apprehending the accused in case any of them is seen by the public". The Prosecutor reiterates that the named individuals are innocent until the Tribunal has reached a final verdict after the completion of the trial and any appeals. Indeed, the arrest of the four accused is only a first step in the process of uncovering the truth. While the Lebanese Authorities persist in their efforts to arrest the accused, the Office of the Prosecutor continues to investigate and prepare for trial. On 17 August, the Pre-Trial Judge ordered that his decision confirming the indictment related to the 14 February 2005 attack, as well as the indictment itself, be made public.

El Sayed case. On 18 March, the STL confirmed that the Prosecutor submitted a confidential and ex parte application to the Pre-Trial Judge on 10 March. The filing, which relates to documents that Mr El Sayed alleges are connected to his detention in Lebanon, was ordered by the Pre-Trial Judge on 7 February. The Prosecutor was asked to provide reasons why the release of these documents could amongst other things prejudice ongoing or future investigations or could put people's lives at risk. On 12 May, the Pre-Trial Judge, Daniel Fransen, ordered that the tribunal's Prosecutor release more than 270 documents to Jamil El Sayed. Judge Fransen ruled that Mr El Sayed would receive some of the documents in the possession of the STL Prosecutor very soon. A large majority of these will be disclosed to Mr El Sayed, whilst others can only be inspected by his counsel.

Trial Chamber convened for the first time. On 8 September, President Cassese issued an order convening the Trial Chamber for the first time. According to the Tribunal's rules, the Trial Chamber may meet before trial starts to engage in various matters, such as holding an initial appearance with the accused if one is in custody, deciding whether a trial in absentia is appropriate and ruling on preliminary motions.

News

Deaths of STL Judge, First Registrar and First President. On 25 February, the STL announced the death of Judge Bert Swart, the presiding judge of the Trial Chamber. Judge Swart was involved with the work of the STL from its inception, playing a critical role in the Tribunal's legal framework. Judge Swart died after a protracted illness. On 14 June, the STL announced the death of Mr Robin Vincent, the Tribunal's first Registrar. On 21 October, former and first STL President, Judge Antonio Cassese died from cancer at the age of 74.

New STL President. On 10 October, Judge Sir David Baragwanath was unanimously elected President of the Tribunal and Presiding Judge of the Appeals Chamber, after being

proposed by Vice-President Riachy and Judge Cassese. The appointment of the new President by the Appeals Chamber follows the resignation the day before, on health grounds, of Judge Antonio Cassese as President. Judge Cassese continued to serve as a Judge of the Tribunal's Appeals Chamber, until he finally died.

Appeals Chamber decision on legal questions. On 16 February, The Appeals Chamber issued a interlocutory decision on the fifteen legal questions submitted by the Pre-Trial Judge. In reaching this decision the Appeals Chamber considered the oral submissions by the Prosecution and the Defence Office at a public hearing on 7 February, as well as their written briefs and skeleton arguments. The Appeals Chamber also received and considered *amici curiae* briefs (legal opinions) from two academics. The key rulings of the Appeals Chamber:

1. *Interpretation of the Statute.* The Appeals Chamber notes that the STL, unlike other international courts, can only apply the rules of Lebanese substantive law about the definition of crimes. However, the Appeals Chamber states that the Tribunal will apply Lebanese law as interpreted and applied by Lebanese courts, "unless such interpretation or application appears to be unreasonable, might result in manifest injustice, or proves not consonant with international principles and rules binding upon Lebanon".

2. *The definition of terrorism*. The Appeals Chamber confirms that the STL will apply Lebanese law on the crime of terrorism. The elements of which are: (i) an intentional act, whether or not constituting an offence under other provisions of the Criminal Code, aimed at spreading terror; (ii) the use of a means "liable to create a public danger", such as explosive devices, inflammable materials, toxic or corrosive products and infectious or microbial agents. In its detailed examination the Appeals Chamber notes that courts in Lebanon have often taken a narrow approach to part (ii), by *only* applying the crime of terrorism to the means specifically listed in the code - which excludes for example attacks with guns. The Appeals Chamber has concluded that the Code suggests that the list of means of attack is illustrative, not exhaustive, and therefore the definition in the code may be more broadly interpreted by the STL.

3. *Crimes and criminal responsibility.* The Appeals Chamber has ruled that in relation to the crimes of homicide and conspiracy, Lebanese law applies. The STL Statute has two references to the modes of criminal responsibility with Article 2 focusing on the Lebanese Criminal Code and with Article 3 outlining modes of responsibility that are based oninternational criminal law. The Appeals Chamber has considered the possibility of conflict between the two legal systems and concludes that Lebanese and international law mostly overlap in this area. When there is no conflict between Lebanese and international law, the Appeals Chamber states that Lebanese law must be applied. If there is conflict, then the legal system that proves more favourable to the accused must be applied.

4. *Multiple offences and cumulative charging.* This focuses on whether: (a) the same conduct (say, planting a bomb) by an individual may result in different charges (for example, murder and terrorism)?; (b) a defendant can be charged in a cumulative way (for both murder and terrorism) or should they be charged alternatively (for either murder or terrorism)? The Appeals Chamber notes that Lebanese law allows for multiple charging and so concludes that this should be applied at the STL. The Appeals Chamber also reminds the Prosecutor that care should be taken to provide the utmost clarity to the accused about the charges that they face. Cumulative charging will only be allowed when the offences are truly distinct in nature.

Code of Professional Conduct for Counsel. On 28 February, the President of the STL, Judge Antonio Cassese has published the Code of Professional Conduct for Counsel appearing before the Tribunal. This Code is a reference point for lawyers from the Prosecution and the Defence, as well as for legal representatives of victims who participate in the proceedings of the Tribunal. The Code of Conduct is required by the Tribunal's Rules of Procedure and Evidence (60 (C)).

Second Annual Report. On 4 March, President Cassese published the second STL Annual Report, which outlines the successes of the past year as well as the challenges that the Tribunal has faced. "This has been a momentous year for the STL", said Judge Antonio Cassese. "The submission of the firstindictment by the Prosecutor to the Pre-Trial Judge was highly significant and it marked the start of the judicial phase of the STL's life." The Annual Report provides an overview of the work of all the organs within the Tribunal. Amongst the highlights of the past year has been the intensification of investigations by the Office of the Prosecutor, as well as the submission of an indictment. The Defence Office has had an important role in judicial proceedings and has also drawn up a list of counsel who will be available to represent any accused. The Registry has once again ensured the efficient and smooth management of the Tribunal, with the Registrar being particularly active in fundraising. During 2010-11 there were also several judicial developments, notably the landmark and unanimous ruling by the Appeals Chamber in February 2011, which clarified the definition of terrorism as well as the applicable law in trials at the STL. In his conclusion to the Annual Report, Judge Antonio Cassese, underlines the challenges that the STL faces as it continues to fulfill its mandate. These include a difficult security environment, as well as the costs of ensuring that our work is both efficient and transparent. Judge Cassese also outlines his vision for the STL over the coming year noting his desire for investigations to be completed and for all indictments to be submitted to the Pre-Trial Judge by the end of February 2012.

New Deputy Registrar. On 15 November, Ms. Kaoru Okuizumi swore in as Deputy Registrar. Ms Okuizumi, a Japanese national, has extensive background in international criminal justice and human rights. She has served in the Registries of the ICTY and the SCLSL, and has also been deployed to United Nations field operations in Croatia, Bosnia and Herzegovina, the Democratic Republic of the Congo, Kosovo and

Nepal. Ms Okuizumi comes to the STL from the Criminal Law and Judicial Advisory Service in the UN Department of Peacekeeping Operations in New York. The Deputy Registrar position had been vacant since Mr. von Hebel was appointed Registrar in December 2010.

Financial contribution. The Government of Lebanon made the full payment for 2011 of USD 32,184,635, received on 1 December.

Prosecutor to leave STL. On 14 December, the Prosecutor, Daniel Bellemare, informed the Secretary-General of the United Nations that, for health reasons, he would not intend to seek reappointment for a second term as Prosecutor at the end of February 2012.

POLITICAL AND ECONOMIC COOPERATION

IX. EUROPEAN FREE TRADE ASSOCIATION COURT (EFTA COURT) (WWW.EFTACOURT.INT)

Judgements

Judgment of 10 May in Joined Cases E-4/10, E-6/10 and E-7/10, Principality of Liechtenstein, Reassur Aktiengesellschaft and Swisscom Re Aktiengesellschaft v EFTA Surveillance Authority. The EFTA Court upheld a decision of the EFTA Surveillance Authority ("ESA") of 24 March 2010 declaring that the taxation of captive insurance companies in Liechtenstein constituted State aid incompatible with the functioning of the EEA Agreement ("EEA"). The Court also found that ESA did not err in law when it ordered the recovery of the tax benefits from 6 November 2001 to 31 December 2009.

Judgment of 28 June in Case E-12/10 EFTA Surveillance Authority v Iceland. Icelandic rules require foreign undertakings which post workers temporarily to Iceland to pay regular wages for sick leave. In addition, Icelandic law imposes an obligation on undertakings to take out accident insurance for posted workers. In this judgement, the EFTA Court held that by maintaining in force these rules, Iceland was in breach of its obligations following from Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

Judgment of 28 June in Case E-18/10 EFTA Surveillance Authority v The Kingdom of Norway. The EFTA Court held that by failing to take the measures necessary to comply with the judgment of the Court in Case E-2/07 EFTA Surveillance Authority v. The Kingdom of Norway, Norway had failed to fulfil its obligations under Article 33 of the Surveillance and Court Agreement ("SCA"). In its judgment in Case E-2/07, the Court held that Norway had failed to fulfil its obligations under the EEA Agreement by maintaining in

force certain provisions of the Norwegian Public Service Pension Act which constituted a violation of the principles of non-discrimination with regard to equal pay and the calculation of benefits.

Judgment of 22 August in Case E-14/10 Konkurrenten.no AS v EFTA Surveillance Authority. In this case, the EFTA Court annulled the EFTA Surveillance Authority's decision No 254/10/COL of 21 June 2010 (AS Oslo Sporveier and AS Sporveisbussene). By the decision, the EFTA Surveillance Authority (ESA) had closed its investigation of alleged State aid granted to AS Oslo Sporveier, the legal predecessor of Kollektivtransportproduksjon AS (KTP). The contested aid consisted on the one hand of annual compensation payments to AS Oslo Sporveier and its affiliate AS Sporveisbussene for the operation of parts of the public bus transport grid in Oslo and on the other of a capital injection into these companies that was supposed to cover a gap in their pension funds. The companies were also engaged in other commercial activities, in particular on the express bus market.

Judgment of 12 September in Case E-16/10 Philip Morris Norway AS v the Norwegian State, represented by the Ministry of Health and Care Services. The advertising of tobacco products has been totally prohibited in Norway since the introduction of such a ban in 1973. In 2009 Norway adopted additional legislation, which extended the advertising prohibition to the visible display of tobacco products and smoking devices. This visual display ban allows for one exemption, in that it does not apply to dedicated tobacco boutiques. Philip Morris, a tobacco company, brought a court action challenging the visual display ban. Oslo District Court (Oslo tingrett), which heard the case, requested an advisory opinion from the EFTA Court, asking whether Article 11 of the EEA Agreement should be understood to mean that a general prohibition against the visible display of tobacco products constituted a measure having equivalent effect to a quantitative restriction on the free movement of goods. Assuming that there was such a restriction, the EFTA Court was also asked which criteria would be decisive to determine whether a display prohibition, based on the objective of reduced tobacco use by the public in general and especially amongst young people, would be suitable and necessary having regard to public health.

In this judgement, the EFTA Court declared that a visual display ban on tobacco products such as the one at issue in the case, constitutes a measure having equivalent effect to a quantitative restriction within the meaning of Article 11 EEA if, in fact, the ban affects the marketing of products from other EEA States to a greater degree than that of imported products that were, until recently, produced in Norway. The EFTA Court observes that is for the national court to determine whether the application of national law has such an effect or whether such an effect cannot be clearly verified and, therefore, is too uncertain or indirect to constitute a hindrance of trade.

Judgment of 14 December in Case E-8/11 EFTA Surveillance Authority v Iceland. In this case, the EFTA Court held that by failing to ensure that its competent authorities made, and

where relevant, approved strategic noise maps and drew up action plans for all major roads on its territory which have more than six million vehicle passages a year, and to ensure that the information from strategic noise maps and summaries of the action plans were sent to the EFTA Surveillance Authority (ESA) within the time-limits prescribed, Iceland has failed to fulfil its obligations arising from Articles 7(1), 8(1) and 10 of Directive 2002/49/EC.

Advisory Opinions

Advisory Opinion of 26 July in Case E-4/11 Arnulf Clauder. In this case, the EFTA Court gave an Advisory Opinion on questions referred to it by the Administrative Court of the Principality of Liechtenstein ("Verwaltungsgerichtshof des Fürstentums Liechtenstein") concerning the Residence Directive (Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States). According to Article 16 of the Directive, EEA nationals who have resided legally for a continuous period of five years in an EEA State shall have the right of permanent residence there. This right is not subject to a condition to have sufficient resources. The questions referred to the EFTA Court essentially concerned whether an EEA national with a right of permanent residence, who is a pensioner and in receipt of social welfare benefits in the host EEA State, may claim the right to family reunification even if the family member will also be claiming social welfare benefits.

Advisory Opinion of 14 December in Case E-3/11 Pálmi Sigmarsson v the Central Bank of Iceland. The EFTA Court gave an Advisory Opinion on questions referred to it by Héraðsdómur Reykjavíkur (Reykjavík District Court) concerning the interpretation of Article 43 of the EEA Agreement, which provides for the adoption of derogations from the free movement of capital. Following its financial crisis in late 2008, elandic authorities adopted a temporary prohibition on transfer of Icelandic krónur to Iceland. The Plaintiff before the national court is an Icelandic national resident in the United Kingdom. He applied for an exemption to those rules, in order to transfer 16.4 million Icelandic krónur, which he had bought on the offshore market. The Central Bank of Iceland rejected the Plaintiff's application. This conclusion was upheld by a ruling of the Ministry of Economic Affairs. In the proceedings before the Reykjavík District Court, the Plaintiff has sought judicial review of the Central Bank's decision, arguing that it is incompatible with the rules on free movement of capital established in the EEA Agreement. The Court held that it has jurisdiction to review whether measures taken pursuant to Article 43 EEA satisfy the substantive requirements of that provision. Moreover, the Court held that the conditions laid down in Article 43(2) and (4) EEA call for a complex assessment of various macroeconomic factors. EFTA States must therefore enjoy a wide margin of discretion, both in determining whether the conditions are fulfilled, and the choice of measures taken, as those measures in many cases concern fundamental choices of economic policy.

Advisory Opinion of 15 December in Case E-1/11 (Dr A). The EFTA Court gave an Advisory Opinion on a question referred to it by the Norwegian Appeal Board for Health Personnel (Statens helsepersonellnemnd) regarding the interpretation of Directive 2005/36/EC and other EEA law. The complainant in the case before the Appeal Board was trained as a medical doctor in Bulgaria and has an additional specialisation in psychiatry. Her application for an authorisation as a medical doctor in Norway was accompanied by a statement from the Bulgarian authorities confirming that she was covered by Directive 2005/36/EC, on the basis of her education and professional experience as a medical doctor in Bulgaria. In the proceedings before the Appeal Board, the complainant is appealing against a decision of the Norwegian Registration Authority for Health Personnel to reject her application, on the basis of her alleged lack of necessary aptitude, and only grant her a one year licence which would allow her to work as a subordinate medical doctor. The Court found that an EEA State is not permitted under the Directive to make the recognition of professional qualifications of doctors meeting the criteria of the Directive subject to any further conditions. The system of automatic recognition would be jeopardised if it were open to EEA States at their discretion to question the merits of a decision taken by the competent authorities of another EEA State to award the formal evidence of qualification. Nonetheless, an EEA State may make an authorisation to practice medicine conditional upon the applicant having the linguistic knowledge necessary for practising the profession on its territory.

News

New Judge. On 13 January, Mr Per Christiansen from Norway took the oath and entered into office as Judge of the EFTA Court with a term of office that ends on 31 December 2017. He replaced the Judge nominated by Norway, Mr Henrik Bull. On 12 September, Mr Páll Hreinsson from Iceland took the oath and entered into office as Judge with a term of office that ends on 31 December 2014. He replaces the Judge nominated by Iceland, Mr Thorgeir Örlygsson.

Court proposal to amend the EFTA Agreement. In the last months of 2011, the EFTA Court proposed to the EFTA States amendments to the EFTA Agreement on the Establishment of Surveillance Authority and a Court of Justice (SCA). The proposal contains three elements: (1) The possibility of calling *ad hoc* Judges to the bench for an Extended Court; (2) The establishment of an Evaluation Panel for Candidate Judges and the Advocate General in line with Article 255 TFEU; (3) The creation of the post of an Advocate General. The proposals aim at reinforcing the professional competence and the standing of the Court and, thus, to enhance the Court's credibility as a European Court whose function it is to interpret the EEA Agreement alongside the Court of Justice of the European Union (CJEU). Furthermore, it is considered that the legal framework of the EFTA Court ought to be brought more in line with that of the CJEU. The proposed amendments are restricted to the composition of the Court and its formation. The legal functions of the EFTA Court and its relations with the courts of the EFTA States are not affected. The proposals were

introduced to the EFTA States in sessions of the ESA/Court Committee on 14 October and 1 December where the Court´s initiative was welcomed. The proposals are currently under a review by the EFTA States´ Administrations with the aim of discussing them at the next ESA/Court Committee meeting.

New President. On 9 December, Carl Baudenbacher (Liechtenstein) was elected for a fourth term as President of the EFTA Court, starting on 1 January 2012 and ending on 31 December 2014. Carl Baudenbacher has been a member of the Court since 1995.

POLITICAL AND ECONOMIC INTEGRATION

- **America**

X. THE TRIBUNAL OF JUSTICE OF THE ANDEAN COMMUNITY (TJAC) (WWW.TRIBUNALANDINO.ORG.EC)

Judgements (enforcement actions)

Case 03-AI-2010, Empresa de Telecomunicaciones de Bogotá S.A. ESP, (ETB S.A. E.S.P.) v. Republic of Colombia. By Judgement of 26 August, the TJAC concluded ruled that the Respondent had breached its obligations under Andean Community Law by not requesting in due time prejudicial interpretation to the TJAC.

Interpretations

As usual, the most part of TJCA resolutions issued during this period –more than 100- deal with its prejudicial function, especially regarding the Law of Intellectual and Industrial Proprerty (Decisions nº 344 and 486, on trade marks, patents, utility models, etc.).

XI. CENTROAMERICAN COURT OF JUSTICE (CCJ) (PORTAL.CCJ.ORG.NI)

[It was not possible to update this section due to a malfunction of the CCJ website]

INTERNATIONAL ARBITRAL TRIBUNALS

XII. PERMANENT COURT OF ARBITRATION (PCA) (WWW.PCA-CPA.ORG)

Procedural Orders

Indus Waters Kishenganga Arbitration (Pakistan v. India). On 23 September, the Court of Arbitration constituted under the Indus Waters Treaty 1960 issued its *Order on the Interim Measures Application of Pakistan dated 6 June*. The Court concluded that having found that it was necessary to lay down certain interim measures in order to "avoid prejudice to the final solution . . . of the dispute", so unanimously ruled that: "(1) For the duration of these proceedings up until the rendering of the Award, (a) It is open to India to continue with all works relating to the Kishenganga Hydro-Electric Project, except for the works specified in (c) below; (b) India may utilize the temporary diversion tunnel it is said to have completed at the Gurez site, and may construct and complete temporary cofferdams to permit the operation of the temporary diversion tunnel, such tunnel being provisionally determined to constitute a "temporary by-pass" within the meaning of Article I(15)(b) as it relates to Article III(2) of the Treaty; (c) Except for the sub-surface foundations of the dam stated in paragraph 151(iv) above, India shall not proceed with the construction of any permanent works on or above the Kishenganga/Neelum riverbed at the Gurez site that may inhibit the restoration of the full flow of that river to its natural channel; and (2) Pakistan and India shall arrange for periodic joint inspections of the dam site at Gurez in order to monitor the implementation of sub-paragraph 1(c) above. The Parties shall also submit, by no later than December 19, 2011, a joint report setting forth the areas of agreement and any points of disagreement that may arise between the Parties concerning the implementation of this Order".

Guaracachi America, Inc. (U.S.A.) and 2. Rurelec plc (United Kingdom) v. Plurinational State of Bolivia. During 2011, both Claimant and Respondent proceed to appoint Mr. Manuel Conthe as arbitrator (12 January) and Dr. Raúl Emilio Vinuesa as arbitrator (28 April), respetively, and Dr. José Miguel Júdice as presiding arbitrator. On 7 December, the Tribunal and the Parties agreed the Terms of Appointment and Procedural Order N. 1.

News

New member States. On 29 April, the Republic of Rwanda deposited its instrument of accession to the 1907 Hague Convention. The Republic of Rwanda will thereby become a Member State of the PCA, effective June 28. Rwanda will be the 112th Member State of the PCA and the 20th member of the African Union to join the PCA. On 28 October, the Republic of Albania acceded to the 1907 Convention for the Pacific Settlement of International Disputes, and became an effective member state of the PCA on December 27. On 29 December, the Socialist Republic of Vietnam deposited its instruments of

accession to the 1899 and 1907 Hague Conventions for the Pacific Settlement of International Disputes with the Ministry of Foreign Affairs of The Netherlands, the depositary of the Conventions. According to Article 60 of the 1899 Convention, the Convention entered into force for Vietnam on December 29, 2011

New Rules of Procedure. On 6 December, the Administrative Council of the PCA adopted the "PCA Optional Rules for the Arbitration of Disputes Relating to Outer Space Activities". The project was set in motion in 2009 by the PCA's Secretary-General, Mr. Christiaan M.J. Kröner, in response to a perceived need for specialized dispute resolution mechanisms in the rapidly evolving field of outer space activities. The text was developed by the International Bureau of the PCA, in conjunction with an Advisory Group of leading experts in air and space law. The Advisory Group is chaired by H.E. Fausto Pocar, judge of the International Criminal Tribunal for the Former Yugoslavia. The other members of the Advisory Group are Dr. Tare Brisibe, Prof. Frans von der Dunk, Prof. Joanne Gabrynowicz, Prof. Dr. Stephan Hobe, Dr. Ram Jakhu, Prof. Armel Kerrest, Mrs. Justine Limpitlaw, Prof. Dr. Francis Lyall, Prof. V.S. Mani, Mr. Jose Montserrat Filho, Prof. Dr. Maureen Williams, and Prof. Haifeng Zhao.

New PCA Secretary-General. On 6 December, H.E. Hugo Hans Siblesz, the former Ambassador of the Kingdom of the Netherlands to France, was appointed by the Administrative Council of the PCA as the PCA's thirteenth Secretary-General to a five-year term, commencing on 1 June 2012. Mr. Siblesz replaces former Secretary-General Christian M. J. Kröner.