

CHRONICLE ON INTERNATIONAL COURTS AND TRIBUNALS (JULY - DECEMBER 2009)

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Summary: I. INTERNATIONAL COURT OF JUSTICE. II. INTERNATIONAL CRIMINAL COURT (ICC). III. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA. IV. INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (ICTR). V. SPECIAL COURT FOR SIERRA LEONE (SCSL). VI. EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (ECCC). VII. SPECIAL TRIBUNAL FOR THE LEBANON (STL). VIII. INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (ITLOS). XII. EUROPEAN FREE TRADE ASSOCIATION COURT (EFTA COURT). XIII. THE ANDEAN COMMUNITY TRIBUNAL OF JUSTICE (ACTJ). XIV. CENTROAMERICAN COURT OF JUSTICE (CCJ)

INTERNATIONAL JUDICIAL TRIBUNALS

GENERAL JURISDICTION

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

1. Judgments and other Resolutions

- *Judgment of July 13, 2009, Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*. The Court, as regards Costa Rica's navigational rights on the San Juan river under the 1858 Treaty, in that part where navigation is common:

- Finds unanimously that Costa Rica has the right of free navigation on the San Juan river for purposes of commerce;
- Finds unanimously that the right of navigation for purposes of commerce enjoyed by Costa Rica includes the transport of passengers;
- Finds unanimously that the right of navigation for purposes of commerce enjoyed by Costa Rica includes the transport of tourists;
- Finds by nine votes to five that persons travelling on the San Juan river on board Costa Rican vessels exercising Costa Rica's right of free navigation are not required to obtain Nicaraguan visas;

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- Finds unanimously that persons travelling on the San Juan river on board Costa Rican vessels exercising Costa Rica's right of free navigation are not required to purchase Nicaraguan tourist cards;
- Finds by thirteen votes to one that the inhabitants of the Costa Rican bank of the San Juan river have the right to navigate on the river between the riparian communities for the purposes of the essential needs of everyday life which require expeditious transportation;
- Finds by twelve votes to two that Costa Rica has the right of navigation on the San Juan river with official vessels used solely, in specific situations, to provide essential services for the inhabitants of the riparian areas where expeditious transportation is a condition for meeting the inhabitants' requirements;
- Finds unanimously that Costa Rica does not have the right of navigation on the San Juan river with vessels carrying out police functions;
- Finds unanimously that Costa Rica does not have the right of navigation on the San Juan river for the purposes of the exchange of personnel of the police border posts along the right bank of the river and of the re-supply of these posts, with official equipment, including service arms and ammunition;

(2) As regards Nicaragua's right to regulate navigation on the San Juan river, in that part where navigation is common,

- Finds unanimously that Nicaragua has the right to require Costa Rican vessels and their passengers to stop at the first and last Nicaraguan post on their route along the San Juan river;
- Finds unanimously that Nicaragua has the right to require persons travelling on the San Juan river to carry a passport or an identity document;
- Finds unanimously that Nicaragua has the right to issue departure clearance certificates to Costa Rican vessels exercising Costa Rica's right of free navigation but does not have the right to request the payment of a charge for the issuance of such certificates;
- Finds unanimously that Nicaragua has the right to impose timetables for navigation on vessels navigating on the San Juan river;
- Finds unanimously that Nicaragua has the right to require Costa Rican vessels fitted with masts or turrets to display the Nicaraguan flag;

(3) As regards subsistence fishing,

- Finds by thirteen votes to one that fishing by the inhabitants of the Costa Rican bank of the San Juan river for subsistence purposes from that bank is to be respected by Nicaragua as a customary right;

(4) As regards Nicaragua's compliance with its international obligations under the 1858 Treaty:

- Finds by nine votes to five that Nicaragua is not acting in accordance with its obligations under the 1858 Treaty when it requires persons travelling on the San

Juan river on board Costa Rican vessels exercising Costa Rica's right of free navigation to obtain Nicaraguan visas;

- Finds unanimously that Nicaragua is not acting in accordance with its obligations under the 1858 Treaty when it requires persons travelling on the San Juan river on board Costa Rican vessels exercising Costa Rica's right of free navigation to purchase Nicaraguan tourist cards;
- Finds unanimously that Nicaragua is not acting in accordance with its obligations under the 1858 Treaty when it requires the operators of vessels exercising Costa Rica's right of free navigation to pay charges for departure clearance certificates;
- Rejects unanimously all other submissions presented by Costa Rica and Nicaragua.

2. Recent cases

- *Republic of Honduras v. Federative Republic of Brazil*. On October 28, the Ambassador of Honduras to the Netherlands filed at the ICJ an application instituting proceedings by the Republic of Honduras against the Federative Republic of Brazil. In this document, it is stated that the "dispute between the Republic of Honduras and the Federative Republic of Brazil relates to legal questions concerning diplomatic relations and associated with the principle of non-intervention in matters which are essentially within the domestic jurisdiction of any State, a principle incorporated in the Charter of the United Nations".

In particular, the application indicates that "[Mr. José Manuel Zelaya Rosales and] an indeterminate number of Honduran citizens", who have been taking refuge in the Brazilian Embassy in Honduras since 21 September 2009, "are using [its] premises . . . as a platform for political propaganda and thereby threatening the peace and internal public order of Honduras, at a time when the Honduran Government is making preparations for the presidential elections which are due to take place on 29 November 2009". It is stated that "[t]he Brazilian diplomatic staff stationed in Tegucigalpa are allowing Mr. Zelaya and his group to use the facilities, services, infrastructure and other resources in order to evade justice in Honduras".

In this application:

- Honduras respectfully requests the Court to adjudge and declare that it has jurisdiction to adjudicate the dispute between Honduras and Brazil and that the Application of Honduras is admissible.
- Honduras respectfully requests the Court to adjudge and declare that Brazil does not have the right to allow the premises of its Mission in Tegucigalpa to be used to promote manifestly illegal activities by Honduran citizens who have been staying within it for some time now and that it shall cease to do so. Just as Brazil rightly demands that the Honduran authorities guarantee the security and inviolability of the Mission premises, Honduras demands that Brazil's diplomatic staff stationed in Tegucigalpa devote themselves exclusively to the proper functions of the Mission and not to actions constituting interference in the domestic affairs of another State.

- While the primary purpose of this Application is to secure a declaration that Brazil has breached its obligations under Article 2 (7) of the Charter and those under the 1961 Vienna Convention on Diplomatic Relations, the Government of Honduras reserves the right to claim reparation for any damage resulting from the actions of Brazil, of its Mission, and of the Honduran persons sheltered by it in the Mission.
 - Pursuant to Article 31 of the Statute of the Court and Article 35, paragraph 1, of the Rules of Court, the Republic of Honduras gives notice of its intent to exercise the power to choose a judge *ad hoc*.
 - Honduras reserves the right to amend and supplement the terms of the Application.
 - Honduras reserves the right to file a request for the indication of provisional measures should Brazil not immediately put an end to the disturbance caused to internal order in Honduras.
- *The Kingdom of Belgium v. the Swiss Confederation*. On December 21, the Kingdom of Belgium initiated proceedings against Switzerland in respect of a dispute concerning “the interpretation and application of the Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters . . . , and the application of the rules of general international law that govern the exercise of State authority, in particular in the judicial domain, [and relating to] the decision by Swiss courts not to recognize a decision by Belgian courts and not to stay proceedings later initiated in Switzerland on the subject of the same dispute”.
- In its Application Belgium states that the dispute in question “has arisen out of the pursuit of parallel judicial proceedings in Belgium and Switzerland” in respect of the civil and commercial dispute between the “main shareholders in Sabena, the former Belgian airline now in bankruptcy”. The Swiss shareholders in question are SAirGroup (formerly Swissair) and its subsidiary SAirLines; the Belgian shareholders are the Belgian State and three companies in which it holds the shares.
- The Applicant affirms that “in connection with the Swiss companies’ acquisition of equity in Sabena in 1995 and with their partnership with the Belgian shareholders, contracts were entered into, between 1995 and 2001, for among other things the financing and joint management of Sabena” and that this set of contracts “provided for exclusive jurisdiction on the part of the Brussels courts in the event of dispute and for the application of Belgian law”.
- Belgium states in its Application that, “on 3 July 2001, taking the position that the Swiss shareholders had breached their contractual commitments and non-contractual duties, causing [the Belgian shareholders] injury”, the Belgian shareholders sued the Swiss shareholders in the commercial court of Brussels, seeking damages to compensate for the lost investments and for the expenses incurred “as a result of the defaults by the Swiss shareholders”. After finding jurisdiction in the matter, that court “found various instances of wrongdoing on the part of the Swiss shareholders but rejected the claims for damages brought by the Belgian shareholders”. Both Parties

appealed against this decision to the Court of Appeal of Brussels, which in 2005 by partial judgment upheld the Belgian courts' jurisdiction over the dispute on the basis of the Lugano Convention. The proceedings on the merits are pending before that court and the case will be pleaded there in February and May 2010.

3. Pendant cases

- *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*. The ICJ held public hearings in this case from Monday 14 September to Friday 2 October 2009, at the Peace Palace in The Hague, the seat of the Court. On October 2, the Court concluded the case and started its deliberation.
- *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*. By an Order of July 9, the Court fixed 9 July 2010 as the time-limit for the filing of a Memorial by the Kingdom of Belgium and 11 July 2011 as the time-limit for the filing of a Counter-Memorial by the Republic of Senegal.
- *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo (request for advisory opinion)*. The public hearings were open on December 1, until December 11, at the Peace Palace, the seat of the Court. During these hearings, statements and comments may be presented orally by the United Nations and its Member States, whether or not they have filed written statements and, possibly, written comments. At the hearings, the authors of the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo will be able to present an oral contribution. Thirty States and the authors of the unilateral declaration of independence expressed their intention of participating in the oral proceedings before the Court. These States were, in alphabetical order: Albania, Argentina, Austria, Azerbaijan, Bahrain, Belarus, Bolivia, Brazil, Bulgaria, Burundi, China, Croatia, Cyprus, Denmark, Finland, France, Germany, Jordan, the Lao People's Democratic Republic, the Netherlands, Norway, Romania, the Russian Federation, Saudi Arabia, Serbia, Spain, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Venezuela and Viet Nam.
- *Certain Criminal Proceedings in France (Republic of the Congo v. France)*. By an Order of 16 November 2009, the Court fixed 16 February 2010 and 17 May 2010 as the respective time-limits for the filing of an additional pleading by the Republic of Congo and by France.
- *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*. On December 1, the Russian Federation presented its preliminary objections, and pursuant to Article 79, paragraph 5, of the Rules of Court, the proceedings on the merits were then suspended. By an Order of 11 December 2009, the Court fixed 1 April 2010 as the time-limit for the filing of Georgia's written statement on the preliminary objections. The Parties had agreed on a time-limit of four months from the filing of

the preliminary objections for the presentation of the written statement. The subsequent procedure has been reserved for further decision.

INTERNATIONAL CRIMINAL LAW

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

1. Recent cases

- *The Prosecutor v. Omar Hassan Ahmad Al Bashir*. On March 4, the ICC issued a warrant for the arrest of Omar Hassan Ahmad Al Bashir, President of Sudan, for war crimes and crimes against humanity. He is suspected of being criminally responsible, as an indirect (co-)perpetrator, for intentionally directing attacks against an important part of the civilian population of Darfur, Sudan, murdering, exterminating, raping, torturing and forcibly transferring large numbers of civilians, and pillaging their property. This is the first warrant of arrest ever issued for a sitting Head of State by the ICC.
- *The Prosecutor v. Bahr Idriss Abu Garda (Darfur, Sudan)*. On May 17, Bahr Idriss Abu Garda, suspected of having committed war crimes in Darfur, Sudan, voluntarily arrived in The Netherlands by commercial aircraft. On his arrival, he was notified by Court officials of the summons to appear before Pre-Trial Chamber I on May 18. Following a meeting with his legal counsel, he was taken to a location assigned by the Court for his stay in The Netherlands, which remains confidential and considered an extension of the Court. In this case, for the first time, the ICC judges issued a summons to appear instead of an arrest warrant. The Judges of Pre-Trial Chamber I were satisfied that Abu Garda will appear before the Court without the need to arrest him.

2. Pendant cases

- *The Prosecutor v. Thomas Lubanga Dyilo (Democratic Republic of Congo)*. On July 14, the Prosecution concluded the presentation of its case in the trial of Thomas Lubanga Dyilo, alleged founder and leader of the Union des patriotes congolais (UPC). Lubanga Dyilo faces counts of war crimes consisting of enlisting and conscripting children under the age of 15 years and using them to participate actively in hostilities in The Democratic Republic of the Congo (DRC). The trial started on January 26, 2009. The Defence was scheduled to start presenting its evidence in October 2009. On December 8, the Appeals Chamber delivered a summary of the judgment, reversing the decision of Trial Chamber I related to the modification of the legal characterisation of the facts in the case.
- *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui (Democratic Republic of Congo)*. On 25 September, the Appeals Chamber dismissed the appeal of Germain Katanga against Trial Chamber II's decision of 12 June which declared his case

admissible before the ICC. On September 25, the Appeals Chamber dismissed the appeal of Germain Katanga against Trial Chamber II's decision of 12 June which declared his case admissible before the ICC.

- *The Prosecutor v. Jean Pierre Bemba Gombo (Central African Republic)*. On August 14, Pre-Trial Chamber II decided to grant the request of Jean-Pierre Bemba Gombo for interim release, albeit under conditions. The implementation of this decision is deferred pending a determination in which State Jean-Pierre Bemba Gombo will be released and which set of conditions shall be imposed. The Prosecutor Luis Moreno-Ocampo decided to appeal the decision by Pre-Trial Chamber II to grant Jean-Pierre Bemba conditional release until his trial. The Prosecution considers that Mr. Bemba, who is still physically in detention in The Hague, should stay in custody. On September 3, the Appeals Chamber decided to grant suspensive effect to the Prosecutor's Appeal against the Pre-Trial Chamber II decision which granted Jean-Pierre Bemba Gombo conditional release. Hence, implementation of the decision on interim release was suspended pending the final decision on the merits of the Prosecution's Appeal. On September 18, the Presidency of the ICC issued a decision constituting Trial Chamber III. According to the decision, Trial Chamber III will be composed of Judge Elizabeth Odio Benito, Judge Joyce Aluoch and Judge Adrian Fulford. The case of *The Prosecutor v. Jean-Pierre Bemba Gombo* has been referred to the new Trial Chamber. On December 2, Judge Akua Kuenyehia, Presiding Judge of the Appeals Chamber delivered a summary of the judgment reversing the decision of Pre-Trial Chamber II that had granted the request of Jean-Pierre Bemba Gombo for interim release, albeit under conditions. The Appeals Chamber unanimously decided to uphold both grounds of the appeal, considering that the Pre-Trial Chamber "misappreciated and disregarded relevant facts" in reaching its conclusion that a substantial change of circumstances warranted the release of Jean-Pierre Bemba Gombo.
- *The Prosecutor v. Bahr Idriss Abu Garda (Darfur, Sudan)*. On October 19, Pre-Trial Chamber I opened the confirmation hearing in the presence of the suspect, who has not waived his right to be present at the hearing. The hearing continued until October 30.

3. Arrest warrants

On July 8, ICC judges issued arrest warrants against *Joseph Kony and other senior LRA commanders including Okot Odhiambo and Dominic Ongwen* for crimes against humanity and war crimes they are suspected to have committed between 2002 and 2004. They are alleged to have abducted children and transformed them into soldiers and sexual slaves.

Four years have since passed and the suspects remain at large. The Office of the Prosecutor welcomes past state cooperation in the effort to apprehend the LRA fugitives. It takes encouragement from the fact that the governments of the region are now acting together with the support of MONUC to address the issue of arresting LRA suspects. The Office of the Prosecutor remains hopeful that continued concerted efforts will lead to the enforcement of the warrants.

4. Investigations

- *Guinea*. On October 14, in the wake of recent events in Guinea and in light of information related to the alleged commission of crimes under ICC jurisdiction, the Prosecutor Luis Moreno-Ocampo confirmed that the situation in Guinea was under preliminary examination by his Office.

Guinea has been a State Party to the Rome Statute since 14 July 2003. As such the ICC has jurisdiction over war crimes, crimes against humanity or genocide possibly committed in the territory of Guinea or by nationals of Guinea, including killings of civilians and sexual violence. The Office of the Prosecutor has taken due note of serious allegations surrounding the events of 28 September 2009 in Conakry and has received information relating to these events in accordance with article 15 of the Rome Statute. A preliminary examination of the situation has been immediately initiated in order to determine whether crimes falling under the Court's jurisdiction have been perpetrated.

“From the information we have received, from the pictures I have seen, women were abused or otherwise brutalized on the pitch of Conakry's stadium, apparently by men in uniform”, said Deputy Prosecutor Fatou Bensouda. “This is appalling, unacceptable. It must never happen again. Those responsible must be held accountable”.

Other situations under preliminary examination by the Office include Afghanistan, Colombia, Côte d'Ivoire, Georgia, Kenya, and Palestine.

5. News

- *The Czech Republic ratifies the Rome Statute*. On July 21, the Government of the Czech Republic deposited its instrument of ratification to the Rome Statute. The Statute will enter into force for the Czech Republic on October 1, bringing the total number of States Parties to the Rome Statute to 110.
- *VIII General Assembly of States Parties*. On November 26, the Assembly of States Parties to the Rome Statute concluded its VIII session, adopting resolutions on several issues, including the Review Conference of the Rome Statute, the establishment of an independent oversight mechanism, the establishment of a liaison office at the African Union Headquarters, the permanent premises of the Court and the programme budget for 2010.

The Assembly decided that the Review Conference would be held in Kampala, Uganda, from 31 May to 11 June 2010, for a period of 10 working days to consider:

- a) The possible deletion of article 124 of the Statute, which allows a new State Party to opt for excluding from the Court's jurisdiction war crimes allegedly committed by its nationals or on its territory for a period of seven years;
- b) The definition of the crime of aggression, the conditions for the exercise of jurisdiction by the Court, as well as draft elements of the crime;

- c) The inclusion of the employment of certain poisonous weapons and expanding bullets in the definition of war crimes in article 8 of the Statute.

The Assembly decided to establish a liaison office at the headquarters of the African Union in Addis Ababa.

The Assembly also approved a budget of approximately 103,600,000 USD for 2010 and a staffing level of 768. The threshold for the Contingency Fund was set at 7 million; below that level, the Assembly would consider its replenishment.

For the first time, a delegation of the United States participated in the Assembly as an Observer. In his statement to the Assembly, Ambassador at Large for War Crimes Issues, Mr. Stephen J. Rapp, highlighted the Obama Administration's commitment to the rule of law and the principle of accountability in line with the United States' tradition of support for international criminal justice.

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

1. Judgments

- On July 3, the Appeals Chamber affirmed the contempt of court conviction of former Bosnian Serb Army officer *Dragan Jokić* who was earlier this year sentenced to four months' imprisonment for refusing to testify in the case of Popović and others.
- On July 20, the Trial Chamber III convicted *Milan Lukić and Sredoje Lukić*, to life and 30 years' imprisonment respectively, for crimes against humanity and war crimes committed in eastern Bosnian town of Višegrad during the 1992-1995 conflict.
- On July 23, the Appeals Chamber reversed *Astrit Haraqija's* conviction and affirmed *Bajrush Morina's* conviction and sentence for contempt of the Tribunal for intimidating a protected witness in the trial of the former Kosovo Albanian military leader Ramush Haradinaj and others. Haraqija, former Kosovo Minister for Culture, Youth and Sport was sentenced to five months of imprisonment. Morina, former political adviser to Kosovo's Deputy Minister in the Ministry of Culture, Youth and Sports, was sentenced to three months of imprisonment.
- On July 24, the Trial Chamber II convicted *Vojislav Šešelj* of contempt of the Tribunal and sentenced him to 15 months' imprisonment for disclosing the name and other personal details of protected witnesses in a book he authored.
- On September 14, the Specially Appointed Chamber convicted *Florence Hartmann* of contempt of the Tribunal for disclosing confidential information in knowing violation of a court order. She was sentenced to pay a fine of 7,000 Euros, in two installments of 3,500 Euros each, to be paid by 14 October and 14 November 2009 respectively. Hartmann, a one-time spokesperson for a former Tribunal Prosecutor, disclosed the contents, purported effect and confidential nature of two Appeals Chamber Decisions

from the Slobodan Milošević case in a book as well as an article authored by her in 2007 and 2008.

- On November 12, the Appeals Chamber partially upheld the Trial Chamber's findings in the case of *Dragomir Milošević*, a former Bosnian Serb Army general, convicted for the crimes committed against civilians of Sarajevo during the second half of the 1992-1995 siege of the capital city of Bosnia and Herzegovina. The Appeals Chamber also granted Milošević's appeal in part and reduced his sentence from 33 to 29 years' imprisonment. The Prosecution's sole ground appeal requesting that Milošević be sentenced to life imprisonment was dismissed in its entirety.

2. Pendant cases

- *Karadžić case*. The trial began on Monday, 26 October 2009 at 9:00, in Courtroom I.

Karadžić, former President of the self-proclaimed Republika Srpska and head of the Serbian Democratic Party and Supreme Commander of the Bosnian Serb Army (VRS), is charged by the Prosecution with genocide and a multitude of crimes against Bosnian Muslim, Bosnian Croat and other non-Serb civilians in Bosnia and Herzegovina committed during the 1992-1995 war.

Massacre in Srebrenica: Karadžić also stands accused of genocide for the murder of more than 7,000 Bosnian Muslim men in Srebrenica in 1995. The indictment states that on 8 March 1995, Karadžić instructed Bosnian Serb forces under his command to create an unbearable situation of total insecurity with no hope of further survival of life for the inhabitants of Srebrenica, amongst other places

- On November 23, *Vojislav Šešelj*, the Trial Chamber III ordered that the trial of Vojislav Šešelj resume on Tuesday, 12 January 2010.

3. Transfers to serve sentence

- On September 7, *Momčilo Krajišnik*, one of the highest ranking war-time members of the Bosnian Serb leadership, was transferred to the United Kingdom to serve his 20-year sentence for crimes committed against non-Serb civilians during the conflict in Bosnia and Herzegovina.

4. News

- *Extension of mandates of judges*. On July 7, the Security Council unanimously adopted resolution 1877 (2009), by which the terms of office of newly assigned Appeals Judges, permanent trial and *ad litem* judges were extended until 31 December 2010 or until the completion of the cases to which they are assigned if sooner. The terms of office of the other Appeals Judges had already been extended to 31 December 2010 by resolution 1837 (2008). The resolution also contains a provision indicating that the terms of office of the Appeals Judges will again be reviewed prior to 31 December 2009. In the same

resolution, the Security Council decided that one additional *ad litem* judge may be appointed as a temporary measure, to enable the International Tribunal to assign a reserve judge to one of the trials.

- *New permanent Judges.* On September 2, three permanent judges were sworn in before the Tribunal, replacing three outgoing judges from Belgium, the United Kingdom and the Caribbean. Judges Guy Delvoie (Belgium), Howard Morrison (United Kingdom) and Sir Burton Hall (The Bahamas) were appointed by the UN Secretary-General in accordance with Article 13bis of the ICTY Statute. Their appointments are effective as of 1 September, 31 August and 7 August, respectively, until 31 December 2010 or until the completion of the cases to which they will be assigned if sooner. The three new Judges replace Judges Christine Van Den Wyngaert, Lord Iain Bonyon and Mohamed Shahabuddeen who have resigned from the ICTY.
- *Re-election of President and Vice-President.* On October 26, Judge Patrick Robinson (Jamaica) and Judge O-Gon Kwon (South Korea) were re-elected as President and Vice-President of the Tribunal by the permanent judges in an Extraordinary Plenary Session. President Robinson and Vice-President Kwon were re-elected by acclamation to a new two-year term effective from November 17, 2009.
- *New ad litem judge.* On December 1, Judge Prisca Matimba Nyambe (Zambia) was sworn in as an *ad litem* judge of the Tribunal to sit on the trial of Zdravko Tolimir. Her arrival brings the number of *ad litem* and reserve judges serving at the Tribunal to 13.
- *ICTY's President before the UN Security Council.* On December 3, the Tribunal's President, Judge Patrick Robinson, highlighted the organisation's successes and key challenges ahead as part of his report on the status of the Tribunal's completion strategy. The President informed the Security Council that since his last address to the Security Council in June 2009, the Tribunal has continued to focus its energies on completing its work as expeditiously as possible. Of the ongoing case load, 24 accused are on trial and 13 accused have appeals pending. Only one accused, Zdravko Tolimir, is at the pre-trial stage awaiting the commencement of his trial, which is expected on 17 December 2009. According to the latest estimations, all trials are expected to be completed by mid-2011, with the exception of that of Radovan Karadžić, which is expected to finish in late 2012. The appeal in the Karadžić case would be completed by February 2014 and all other appeals in 2013. The President also requested the assistance of the Security Council with regards to the question of staff retention. The Tribunal loses, on average, one staff member per working day to more secure employment. "The reality of the situation is that there is a very real risk to the Tribunal's ability to conduct its work as expeditiously and fairly as possible during the remaining years of its mandate," President Robinson said. He urged the Security Council to exercise foresight by assisting the Tribunal with measures to retain its qualified staff. The President reiterated his call for a claims commission by which the victims of crimes committed during the wars in the former Yugoslavia could seek compensation for their injuries: "Justice is not only about punishing perpetrators, but also about restoring dignity to victims by ensuring that they have concrete means to rebuild their lives," he said.

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

1. Judgments

- On July 2, the Trial Chamber III convicted and sentenced *Léonidas Nshogoza*, former Defence investigator during the trial of Jean de Dieu Kamuhanda, to 10 months imprisonment for committing contempt of the Tribunal.
- On July 14, the ICTR sentenced *Tharcisse Renzaho*, prefect of Kigali-Ville and Colonel in the Rwandan Armed Forces in 1994, to life imprisonment. He was found guilty of genocide, crimes against humanity and serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II (war crimes).
- On November 5, *Michel Bagaragaza*, former Director General of the office controlling the Rwandan tea industry during the period of the genocide, was convicted of one count of complicity in genocide and sentenced to a prison term of 8 years with credit for the time he has spent in detention since his arrest.
- On November 16, the Appeals Chamber reversed *Protais Zigiranyirazo*'s convictions for genocide and extermination as a crime against humanity and entered a verdict of acquittal. It then ordered his immediate release.
- On November 17, the Trial Chamber I acquitted *Hormisdas Nsengimana* of genocide as well as murder and extermination as crimes against humanity. It then ordered his immediate release from the UN Detention Facility in Arusha.

2. Pendant cases

- On October 5, *Idelphonse Nizeyimana*, former second in command, in charge of intelligence and military operations at ESO (Ecole des Sous Officiers), was arrested in Kampala, Uganda by the National Central Bureau of Interpol of the Ugandan Police in collaboration with the tracking team of the ICTR. The accused, who was a Captain in the Rwanda Armed Forces, and was initially jointly charged with two others Tharcisse Muvunyi (case on re-trial) and Idelphonse Hategekimana (trial in progress), is facing five counts of genocide, or in the alternative complicity in genocide, direct and public incitement to commit genocide and crimes against Humanity.

3. News

- *UN extends term of office of ICTR Judges.* On July 7, the Security Council of the United Nations extended the term of office of six permanent judges of the ICTR until 31 December 2010, or until the completion of the cases to which they were or will be assigned if sooner.
- *Germany and UK signs agreements with ICTR.* On September 25, during the visit of the "Friends of ICTR" to the Tribunal, the Federal Republic of Germany and the United

Kingdom signed separate agreements with the ICTR in support of its work and projects. The Federal Republic of Germany granted a non refundable voluntary contribution of up to US\$ 240,400 to finance ICTR “Youth Sensitization Project” in the African Great Lakes Region, while the United Kingdom signed a Memorandum of Understanding concerning the confidentiality and privacy of information between the Government of the UK and the Office of the Prosecutor.

- *22nd Plenary Session. Amendment of the Rules of Procedure.* On October 1, the 22nd Plenary Session of the ICTR took place in Arusha, adopting an amendment to the Rules of Procedure and Evidence to include Rule 71 bis: Preservation of Evidence by Special Deposition for Future Trials. This proposal arises from a situation of concern of the Prosecutor’s Office: twelve ICTR indictees are yet to be apprehended and the Tribunal faces an increasing loss of witness evidence, fifteen years after the genocide, which will deteriorate over time.
- *New judges.* On September 10 and on September 28, Judge Bakhtiyar Tuzmukhamedov, from the Russian Federation, and Judge Carmel A. Agius, from Malta, was respectively sworn in as new judges of the ICTR.

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

1. Sentences

Revolutionary United Front case (RUF case)

- On October 26, the Appeals Chamber delivered its judgment upholding the convictions of three former leaders of Sierra Leone’s rebel Revolutionary United Front (RUF) for war crimes and crimes against humanity. These include first-ever convictions for forced marriage and attacks against UN peacekeepers. The Chamber overturned the conviction of former RUF Security Chief Augustine Gbao on Count 2 (collective punishments). The Judges upheld the sentences imposed by the Trial Chamber of 52 years for Issa Sesay, 40 years for Morris Kallon and 25 years for Augustine Gbao, minus time served while in detention at the Special Court.

2. Pendant cases

Charles Taylor

- The Trial Chamber ordered the Defence to open its case on 13 July in the trial of former Liberian President Charles Taylor. The Judges agreed to the change from the original 29 June date after Defence lawyers lost preparation time due to bacteria having been found in the detention facility’s water system. Charles Taylor is scheduled to testify as the first witness in the Defence case on 14 July.

3. Transfers to serve sentence

- Eight persons convicted by the Special Court were transferred on 31 October to Mpanga Prison in Rwanda, where they have begun serving their sentences. They are being incarcerated in a wing of the prison which was originally built to house persons convicted by the ICTR, and was built to meet the required international minimum standards. The transfer was made possible by a bi-lateral agreement concluded between the Special Court and the Government of Rwanda in March 2009.

4. News

- *New Acting Prosecutor.* The Secretary-General of the United Nations has named Deputy Prosecutor Joseph F. Kamara of Sierra Leone Acting Prosecutor of the Special Court, effective 8 September 2009. The appointment follows the resignation of Prosecutor Stephen Rapp, who has been appointed Ambassador-at-Large for War Crimes Issues by U.S. President Barack Obama. Mr. Kamara will serve as Acting Prosecutor until the Secretary-General may appoint a new Prosecutor.
- *Election of SCSL President.* Justice Jon Kamanda of Sierra Leone was elected Presiding Judge of the Appeals Chamber and President of the Special Court, effective 1 November 2009. He succeeds Justice Renate Winter, who stepped down on 31 October.
- *Appointment of Principal Defender.* Sierra Leonean lawyer Claire Carlton-Hanciles was named Principal Defender of the Special Court. Ms. Carlton-Hanciles joined the Defence Office in 2003. She has served as Acting Principal Defender since the departure of Elizabeth Nahamya in December 2008.

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

1. Pendant cases

- *The Prosecutor vs. Khieu Samphan.* On July 3, the Pre-Trial Chamber dismissed two appeals from Khieu Samphan against orders issued by the Co-Investigating Judges, one extending his provisional detention and another rejecting a request for his release. Following the Decision of the Pre-Trial Chamber, Khieu Samphan may be held in provisional detention until 19 November 2009.

2. News

- *Appointment of Acting International Co-Prosecutor.* On August 29, the Supreme Council of Magistracy of Cambodia, upon the nomination of the Secretary-General of

the United Nations, appointed, as an interim measure, Mr. William Smith (Australia) as the Acting International Co-Prosecutor at the Extraordinary Chambers in the Courts of Cambodia. His appointment shall be effective 1 September 2009. This appointment has been made pending the decision on the permanent replacement for the current International Co-Prosecutor, Mr. Robert Petit, whose resignation takes effect on the same date. Two nominations for the permanent replacement have been forwarded by the Secretary-General to the Royal Government of Cambodia for a decision by the Supreme Council of Magistracy.

- *6th Plenary Session.* On September 11, the Sixth Plenary Session of the ECCC concluded, having considered proposals to amend its Internal Rules and adopting a number of them. Amendments adopted by the Plenary Session streamlined proceedings in relation to a number of matters, including witness protection and rules of evidence, as well as adopting or formalizing measures designed to promote more expeditious trial proceedings. The ECCC Plenary Session also voted to support proposals by the Rules and Procedure Committee to adapt Civil Party participation before the ECCC. These modifications are designed to meet the requirements of trials of mass crimes and the specific Cambodian context and to ensure that ECCC proceedings respond more fully to the needs of victims.
- *Appointment of new International Co-Prosecutor.* On December 2, following the nomination by the United Nations Secretary General Ban Ki-moon, and the approval by the Supreme Council of the Magistracy, His Majesty the King Norodom Sihamoni appointed Mr. Andrew T. Cayley (United Kingdom) as new international Co-Prosecutor in the ECCC. Mr. Nicholas Koumjian (USA) has been appointed as reserve Co-Prosecutor. For the last two years Mr. Cayley has been in private practice, defending Charles Taylor before the Special Court for Sierra Leone and Ivan Cermak before the International Criminal Tribunal for the former Yugoslavia.

VII. SPECIAL TRIBUNAL FOR THE LEBANON (STL) ([WWW.STL-TSL.ORG](http://www.stl-tsl.org))

- *Appointment of new Registrar.* On July 10, the UN Secretary-General Ban Ki-moon appointed Mr. David Tolbert of the United States of America as the Registrar of the Special Tribunal for Lebanon. He commenced his duties on 26 August 2009, as the second Registrar of the Special Tribunal for Lebanon, succeeding Mr. Robin Vincent.
- *Resignation of Judge.* Judge Morrison resigned from the Special Tribunal for Lebanon effective 14 July 2009.
- *Interim Agreement between STL and INTERPOL.* On September 3, the STL and the International Criminal Police Organization (INTERPOL) concluded an interim agreement on INTERPOL's assistance to the Tribunal with regard to its investigations and other proceedings that pertain to the crimes that fall under its jurisdiction. The Interim Agreement, which entered into force on 24 August, is aimed at enabling the STL to request assistance from INTERPOL for the purposes of the ongoing

investigations carried out by the Office of the Prosecutor of the Tribunal and other proceedings undertaken by the Tribunal in discharging its mandate, until a more comprehensive cooperation agreement that is currently being negotiated between the two bodies is concluded and enters into force.

- *Co-Operation Agreement between STL and INTERPOL*. On December 16, the Co-operation Agreement was signed by President Cassese, on behalf of STL, and by Secretary-General Ronald Noble, on behalf of INTERPOL. It entered into force today, on 17 December 2009. The purpose of this Agreement is to establish a framework for co-operation between the STL and INTERPOL for investigations and proceedings in relation to the crimes within the jurisdiction of STL. The Agreement also gives the STL access to INTERPOL's databases and information systems. This Agreement is a more comprehensive Co-operation Agreement replacing the Interim Agreement which entered into force on 24 August 2009.
- *Amendments of the Rules of Procedure and Evidence*. In October 2009, the Judges of the STL met in plenary session for the consideration of proposals for amendments to the Rules of Procedure and Evidence (RPE), which were adopted in March and amended in June 2009. The amendments to the RPE adopted by the Judges in the second plenary were agreed to in light of the experiences gained to date by the STL, and are aimed at further enhancing the efficiency, effectiveness and integrity of the proceedings.

LAW OF THE SEA

VIII. INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (ITLOS) (WWW.ITLOS.ORG)

1. New cases

- *Case n° 16. People's Republic of Bangladesh v. Union of Myanmar (maritime boundary in the Bay of Bengal)*. On December 14, proceedings were instituted before the International Tribunal for the Law of the Sea in the dispute relating to the delimitation of the maritime boundary in the Bay of Bengal between the People's Republic of Bangladesh and the Union of Myanmar. This dispute had initially been submitted to an arbitral tribunal to be constituted under Annex VII of the 1982 United Nations Convention on the Law of the Sea ("the Convention"), through a notification dated 8 October 2009, made by the People's Republic of Bangladesh to the Union of Myanmar.

In a letter dated 13 December 2009 addressed to the President of the Tribunal, the Minister of Foreign Affairs of the People's Republic of Bangladesh referred to the declaration issued by the Union of Myanmar on 4 November 2009 by which the Union of Myanmar "accepts the jurisdiction of the International Tribunal for the Law of the

Sea for the settlement of dispute between the Union of Myanmar and the People's Republic of Bangladesh relating to the delimitation of maritime boundary between the two countries in the Bay of Bengal" and transmitted to the Tribunal a declaration by Bangladesh dated 12 December 2009 by which Bangladesh "accepts the jurisdiction of the International Tribunal for the Law of the Sea for the settlement of the dispute between the People's Republic of Bangladesh and the Union of Myanmar relating to the delimitation of their maritime boundary in the Bay of Bengal".

Based on these declarations, the Minister of Foreign Affairs of Bangladesh, in her letter dated 13 December 2009, stated that "[g]iven Bangladesh's and Myanmar's mutual consent to the jurisdiction of ITLOS, and in accordance with the provisions of UNCLOS Article 287 (4), Bangladesh considers that your distinguished Tribunal is now the only forum for the resolution of the parties' dispute". In her letter, the Minister of Foreign Affairs of Bangladesh further stated that "Bangladesh respectfully invites ITLOS to exercise jurisdiction over the maritime boundary dispute between Bangladesh and Myanmar, which is the subject of Bangladesh's 08 October 2009 statement of claim".

2. Pendant cases

- *Case n° 7. Chile vs. European Union (Case concerning the conservation and sustainable exploitation of swordfish stocks in the South-Eastern Pacific Ocean). Case removed from ITLOS' List.* On November 25, the parties jointly requested the Special Chamber to issue an Order for discontinuance of the case. The Chamber met on December 15 and 16 to consider the request. In a joint communication submitted on December 15, the parties informed the Special Chamber that:

"The European Union and Chile have informed the Special Chamber that they are committed to the signature, ratification or approval, and implementation of and compliance with the new Understanding agreed between negotiators for both Parties on 16 October 2008. The terms of the settlement agreed between negotiators comprise the following elements:

- 1) a more structured framework of fisheries cooperation to replace and transform the 2001 bilateral Provisional Arrangement into a definitive commitment to cooperate for the long-term conservation and management of the swordfish stocks in the South Eastern Pacific.
- 2) conducting their respective swordfish fisheries to catch levels commensurate with the objective of ensuring the sustainability of these resources as well as safeguarding the marine ecosystem.
- 3) freezing of the fishing effort by both Parties at the 2008 level or at the maximum historical peak.
- 4) establishment of a Bilateral Scientific and Technical Committee (BSTC), with the following tasks: exchange of information and data on catch and fishing effort, as well as on stock status; providing scientifically-based advice to fisheries stocks managers to assist them in ensuring the sustainability of the fishing activities of both Parties; advising Parties on the adoption of further conservation measures if needed.

5) the multilateral consultation currently in place should include all the relevant participants in the South Eastern Pacific Ocean swordfish fishery and invited observers from existing organizations with a legitimate interest in the swordfish fishery.

6) agreement that EU vessels fishing for swordfish in the high seas in accordance with the objectives contained in the new Understanding shall be granted access to designated Chilean ports for landings, transshipments, replenishing or repairs.

As a consequence, in accordance with the provisions of the said Understanding, Parties request that the Special Chamber issue an Order for discontinuance of the Case.

The Order of the Special Chamber places on record the discontinuance, by agreement of the Parties, of the proceedings initiated on 20 December 2000 by Chile and the European Community and orders that the case be removed from the List of cases.

3. News

- *Election of new judge.* On March 6, Mr. Paik (Republic of Korea) was elected member of the Tribunal at a Special Meeting of States Parties to the United Nations Convention on the Law of the Sea. The election took place to fill the vacancy created by the death of Judge Choon-Ho Park (Republic of Korea). In accordance with article 6 of the Statute of the Tribunal, Mr Paik will hold office for the remainder of his predecessor's nine-year term, which expires on 30 September 2014. On March 16, Mr. Paik was sworn in as member of the ITLOS.

Mr Paik was Associate Dean at Seoul National University, Graduate School of International Studies in 2003 and from 2005 to 2007. From 2003 to 2004, he was Visiting Professor at Johns Hopkins University's School of Advanced International Studies and Visiting Fellow at Stanford University's Hoover Institution. He also served as Director of the SNU-KIEP EU Center at Seoul National University from 2006 to 2008. Mr Paik has served as Legal Advisor to Korean delegations on many occasions. Mr Paik is currently Director of the Haesung Institute for Ethics in International Affairs (Republic of Korea) and President of the Korean Council on the United Nations System. Since 2008, he has served as Director of the Institute of International Affairs of Seoul National University. In 1997, Mr Paik was appointed Professor at Seoul University, Graduate School of International Studies. Mr Paik has published many books and articles in the field of international law and law of the sea.

POLITICAL AND ECONOMIC COOPERATION

- Europe

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

1. Judgments

- *Judgement of December 1, Case E-7/09, EFTA Surveillance Authority v. The Principality of Liechtenstein (Failure by a Contracting Party to fulfil its obligations – Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies)*. The Court declares that, by failing to adopt, within the time-limit prescribed, the measures necessary to implement Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies, as adapted to the EEA Agreement by Protocol 1 thereto, the Principality of Liechtenstein has failed to fulfil its obligations under Article 19 of the Directive and under Article 7 of the EEA Agreement.

POLITICAL AND ECONOMIC INTEGRATION

- America

XIII. THE ANDEAN COMMUNITY TRIBUNAL OF JUSTICE (ACTJ) **(WWW.TRIBUNALANDINO.ORG)**

1. Judgements

- On July 17, the ACTJ delivered its decision in the *case 05-AI-2007, Secretaría General de la Comunidad Andina v. la República del Ecuador*, declaring that the State breached its obligations under Andean Community Law by maintaining restrictive measures to salt importations (NANDINA 2501.00.11).
- On November 17, the ACTJ delivered its decision in the *case 02-AN-2007, Humberto de Jesús Longas Londoño v. Comisión de la Comunidad Andina*, rejecting the applicant's action under the consideration that the Andean Community Commission wouldn't have exceeded its faculties related to tax harmonization.

2. Prejudicial interpretations

As usual, the most part of ACTJ resolutions issued during this period –around 100- deal with its prejudicial function, specially regarding the Law of Intellectual and Industrial Property (Decisions nº 85, 311, 313, 344 and 486, on trade marks, patents, utility models, etc.; and Decision nº 351 on author's rights and linked rights).

XIV. CENTROAMERICAN COURT OF JUSTICE (CCJ) (WWW.CCJ.ORG.NI)

- Judgement of July 29, *Fundación Santaneca para el Desarrollo Comunitario y Ambiental (FUNSADECA) v. Sala de lo Contencioso-Administrativo de la Corte Suprema de Justicia de El Salvador*. The Court rejects the action declaring that the “denie of justice” can't be considered as part of its competences under the Statute's rules.
- Judgement of October 19, *Ricardo Alfredo Flores Asturias v. PARLACEN*. The Court decides to consider the demand as not presented, for being disrespectful to the Court, reserving its Court's rights to denounce Mr. Flores before the tribunals of Guatemala.
- Judgement of October 28, *Luis Adolfo García Esquivel v. PARLACEN*. The Court rejects de application declaring that the parts before the Court are only entitled to get certified copies of the documents of the process, not of the “Act of the Sentence”.
- Judgement of November 19, *Luis Adolfo Orellana Cisneros v. El Salvador*. The Court upholds the application requesting the exception of lack of objective competence by breaching a judicial decision.