CHRONICLE ON INTERNATIONAL COURTS AND TRIBUNALS (JULY 2013 – JUNE 2014)

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INTERNATIONAL JUDICIAL TRIBUNALS

GENERAL JURISDICTION

I. INTERNATIONAL COURT OF JUSTICE (ICJ) (www.icj-cij.org)

1. Judgments

Judgment of 11 November 2013 in the Case concerning the Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand). The Court found unanimously, that it has jurisdiction under Article 60 of the Statute to entertain the Request for interpretation of the 1962 Judgment presented by Cambodia, and that this Request is admissible; and declared, unanimously, by way of interpretation, that the Judgment of 15 June 1962 decided that Cambodia had sovereignty over the whole territory of the promontory of Preah Vihear, as defined in paragraph 98 of the present Judgment, and that, in consequence, Thailand was under an obligation to withdraw from that territory the Thai military or police forces, or other guards or keepers, that were stationed there.

Judgment of 27 January 2014 in the case concerning the Maritime Dispute (Peru v. Chile). In this final resolution, the Court:

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 DOI: 10.17103/reei.28.14

(1) Decided, by fifteen votes to one, that the starting-point of the single maritime boundary delimiting the respective maritime areas between the Republic of Peru and the Republic of Chile is the intersection of the parallel of latitude passing through Boundary Marker No. 1 with the low-water
line;

(2) Decided, by fifteen votes to one, that the initial segment of the single maritime boundary follows the parallel of latitude passing through Boundary Marker No. 1 westward;

(3) Decided, by ten votes to six, that this initial segment runs up to a point (Point A) situated at a distance of 80 nautical miles from the starting-point of the single maritime boundary;

(4) Decided, by ten votes to six, that from Point A, the single maritime boundary shall continue south-westward along the line equidistant from the coasts of the Republic of Peru and the Republic of Chile, as measured from that point, until its intersection (at Point B) with the 200-nautical-mile limit measured from the baselines from which the territorial sea of the Republic of Chile is measured. From Point B, the single maritime boundary shall continue southward along that limit until it reaches the point of intersection (Point C) of the 200-nautical-mile limits measured from the baselines from which the territorial seas of the Republic of Peru and the Republic of Chile, respectively, are measured;
(5) Decided, by fifteen votes to one, that, for the reasons given in paragraph 189 [of the present Judgment], it does not need to rule on the second final submission of the Republic of Peru.

Judgment of 31 March 2014 in the case concerning Whaling in the Antarctic (Australia v. Japan: New Zealand intervening). The Court found that Japan's whaling programme in the Antarctic (JARPA II) is not in accordance with three provisions of the Schedule to the International Convention for the Regulation of Whaling. In the Judgment, the Court:

(1) found, unanimously, that it has jurisdiction to entertain the Application filed by Australia on 31 May 2010;

(2) found, by twelve votes to four, that the special permits granted by Japan in connection with JARPA II do not fall within the provisions of Article VIII, paragraph 1, of the International Convention for the Regulation of Whaling;

(3) found, by twelve votes to four, that Japan, by granting special permits to kill, take and treat fin, humpback and Antarctic minke whales in pursuance of JARPA II, has not acted in conformity with its obligations under paragraph 10 (e) of the Schedule to the International Convention for the Regulation of Whaling;

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(4) found, by twelve votes to four, that Japan has not acted in conformity with its obligations under paragraph 10 (d) of the Schedule to the International Convention for the Regulation of Whaling in relation to the killing, taking and treating of fin whales in pursuance of JARPA II;

(5) found, by twelve votes to four, that Japan has not acted in conformity with its obligations under paragraph 7 (b) of the Schedule to the International Convention for the Regulation of Whaling in relation to the killing, taking and treating of fin whales in the "Southern Ocean Sanctuary" in pursuance of JARPA II;

(6) found, by thirteen votes to three, that Japan has complied with its obligations under paragraph 30 of the Schedule to the International Convention for the Regulation of Whaling with regard to JARPA II;

(7) decided, by twelve votes to four, that Japan shall revoke any extant authorization, permit or licence granted in relation to JARPA II, and refrain from granting any further permits in pursuance of that programme.

2. Cases removed

Aerial Herbicide Spraying (Ecuador v. Colombia). This case was removed from the Court´s list on 13 September 2013 at the request of Ecuador, following an Agreement between the Parties dated 9 September 2013 "that fully and finally resolves all of Ecuador's claims against Colombia". This Agreement establishes an exclusion zone, in which Colombia will not conduct aerial spraying operations, creates a Joint Commission to ensure that spraying operations outside that zone have not caused herbicides to drift into Ecuador and, so long as they have not, provides a mechanism for the gradual reduction in the width of the said zone. The Agreement sets out operational parameters for Colombia's spraying programme, records the agreement of the two Governments to ongoing exchanges of information in that regard, and establishes a dispute settlement mechanism.

3. Pendant cases

Frontier Dispute (Burkina Faso v. Niger). On 12 July 2013, the Court nominated three experts to assist the Parties in the operation of demarcation of the frontier, pursuant to Article 7, paragraph 4, of the Special Agreement concluded between the Parties on 24 February 2009 and to paragraph 113 of the Judgment delivered by the Court on 16 April 2013.

Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua). On 16 Jul 2013, the Court decided unanimously not to modify the provisional measures indicated by Order of 8 March 2011. After examining the requests of the Parties and finding that it could not accede to them, the Court notes nevertheless that "the presence of

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organized groups of Nicaraguan nationals in the disputed area carries the risk of incidents which might aggravate the present dispute". It adds that that situation is "exacerbated by the limited size of the area and the numbers of Nicaraguan nationals who are regularly present there", and wishes to express "its concerns in this regard" (para. 37). So, the Court reaffirmed those measures, in particular, the requirement that the Parties "shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve" (para. 38).

Certain Activities carried out by Nicargua in the Border Area (Costa Rica v. Nicaragua). On 24 September 2013, the Republic of Costa Rica filed in the Registry of the Court a document entitled "Request for the Indication of New Provisional Measures". Costa Rica claims that its request is prompted by (i) Nicaragua's continued presence on Costa Rica's territory; (ii) the recent and ongoing construction by Nicaragua of two new artificial channels (or caños) in the "disputed territory" which is the subject of the Court's Order of 8 March 2011 on provisional measures; and (iii) related dredging and dumping activities by Nicaragua affecting that territory and detrimentally impacting upon its ecology. Costa Rica "respectfully requests the Court as a matter of urgency to order the following provisional measures so as to prevent further breaches of [its] territorial integrity and further irreparable harm to the territory in question, pending the determination of this case on the merits: (1) the immediate and unconditional suspension of any work by way of dredging or otherwise in the disputed territory, and specifically the cessation of work of any kind on the two further artificial caños . . .; (2) that Nicaragua immediately withdraw any personnel, infrastructure (including lodging tents) and equipment (including dredgers) introduced by it, or by any persons under its jurisdiction or coming from its territory, from the disputed territory; (3) that Costa Rica be permitted to undertake remediation works in the disputed territory on the two new artificial caños and the surrounding areas, to the extent necessary to prevent irreparable prejudice being caused to the disputed territory; and (4) that each Party shall immediately inform the Court as to its compliance with the above provisional measures not later than one week of the issuance of the Order". The public hearings on this request took place between 14 and 17 October 2013.

On the other hand, on 11 October 2013, Nicaragua filled a Request for the indication of provisional measures in this case as well as in the case Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica).

By Order of 22 November 2013, the Court decided that Nicaragua must refrain from any dredging and other activities in the disputed territory and must, in particular, refrain from work of any kind on the two new caños, and that it must fill the trench on the beach north of the eastern caño within two weeks.

Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica). By an Order of 13 December 2013, the Court found, unanimously, "that the circumstances, as they now present themselves to [it], are not such as to require the exercise of its power

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[…] to indicate provisional measures". By its Request, Nicaragua sought to protect certain rights which, in its view, are affected by the road construction works being carried out by Costa Rica near the border area between the two countries along the San Juan River.

By an Order of 3 February 2014, the Court fixed 4 August 2014 and 2 February 2015 as the respective time-limits for the filing of these written pleadings.

4. New cases

Nicaragua v. Colombia. On 16 September 2013, Nicaragua instituted proceedings against Colombia with regard to a "dispute [which] concerns the delimitation of the boundaries between, on the one hand, the continental shelf of Nicaragua beyond the 200-nautical-mile limit from the baselines from which the breadth of the territorial sea of Nicaragua is measured, and on the other hand, the continental shelf of Colombia". In its Application, Nicaragua requests the Court to determine "[t]he precise course of the maritime boundary between Nicaragua and Colombia in the areas of the continental shelf which appertain to each of them beyond the boundaries determined by the Court in its Judgment of 19 November 2012" in the case concerning the Territorial and Maritime Dispute (Nicaragua v. Colombia). The Applicant also requests the Court to indicate "[t]he principles and rules of international law that determine the rights and duties of the two States in relation to the area of overlapping continental shelf claims and the use of its resources, pending the delimitation of the maritime boundary between them beyond 200 nautical miles from Nicaragua's coast". Nicaragua recalls that "[t]he single maritime boundary between the continental shelf and the exclusive economic zones of Nicaragua and of Colombia within the 200-nautical-mile limit from the baselines from which the breadth of the territorial sea of Nicaragua is measured was defined by the Court in paragraph 251 of its Judgment of 19 November 2012".

By an Order of 9 December 2013, the Court fixed 9 December 2014 and 9 December 2015 as respective time–limits for the filing of a Memorial by the Republic of Nicaragua and a Counter-Memorial by the Republic of Colombia.

Nicaragua v. Colombia. On 26 November 2013, Nicaragua instituted proceedings against Colombia with regard to a "dispute [which] concerns the violations of Nicaragua's sovereign rights and maritime zones declared by the Court's Judgment of 19 November 2012 [in the case concerning the Territorial and Maritime Dispute (Nicaragua v. Colombia)] and the threat of the use of force by Colombia in order to implement these violations". In its Application, Nicaragua "requests the Court to adjudge and declare that Colombia is in breach of: its obligation not to use or threaten to use force under Article 2 (4) of the UN Charter and international customary law; its obligation not to violate Nicaragua's maritime zones as delimited in paragraph 251 of the ICJ Judgment of 19 November 2012 as well as Nicaragua's sovereign rights and jurisdiction in these zones; its obligation not to violate Nicaragua's rights under customary international law as reflected

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in Parts V and VI of UNCLOS [the United Nations Convention on the Law Of the Sea]; and that, consequently, Colombia is bound to comply with the Judgment of 19 November 2012, wipe out the legal and material consequences of its internationally wrongful acts, and make full reparation for the harm caused by those acts".

By an Order of 3 February 2014, the Court fixed 3 October 2014 and 3 June 2015 as respective time-limits for the filing of a Memorial by the Republic of Nicaragua and a Counter-Memorial by the Republic of Colombia.

Timor-Leste v. Australia. On 17 December 2013, the Democratic Republic of Timor-Leste instituted proceedings against Australia with regard to the seizure and the subsequent detention, by "the agents of Australia of documents, data and other property which belongs to Timor-Leste and/or which Timor-Leste has the right to protect under international law". In particular, Timor-Leste contends that, on 3 December 2013, officers of the Australian Security Intelligence Organisation, allegedly acting under a warrant issued by the Attorney-General of Australia, attended an office/residence of a legal adviser to Timor-Leste in Canberra and seized, inter alia, documents and data containing correspondence between the Government of Timor-Leste and its legal advisers, notably documents relating to a pending arbitration under the 2002 Timor Sea Treaty between Timor-Leste and Australia.

Timor-Leste also filed on 17 December 2013 a Request for the indication of provisional measures. It states that the purpose of the Request is to protect its rights and to prevent the use of seized documents and data by Australia against the interests and rights of Timor-Leste in the pending arbitration and with regard to other matters relating to the Timor Sea and its resources.

Acting in accordance with the powers conferred upon him by Article 74, paragraph 4, of the Rules of Court, Judge Peter Tomka, addressed on 18 December 2013 an urgent communication to the Prime Minister of the Commonwealth of Australia, with a copy to the Government of the Democratic Republic of Timor-Leste, in the proceedings.

By an Order of 28 January 2014, the Court fixed 28 April 2014 and 28 July 2014 as the respective time-limits for the filing of a Memorial by the Democratic Republic of Timor-Leste and a Counter-Memorial by Australia.

On 3 March 2014, the Court issued its Order on the Request for the indication of provisional measures submitted by Timor-Leste on 17 December 2013. In its Order the Court indicates the following provisional measures: it decides, by twelve votes to four, that Australia shall ensure that the content of the seized material is not in any way or at any time used by any person or persons to the disadvantage of Timor-Leste until the present case has been concluded; it also decides, by twelve votes to four, that Australia shall keep under seal the seized documents and electronic data and any copies thereof until further decision of the Court; it further directs, by fifteen votes to one, that Australia shall not interfere in any way

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in communications between Timor-Leste and its legal advisers in connection with the pending Arbitration under the Timor Sea Treaty of 20 May 2002, with any future bilateral negotiations concerning maritime delimitation, or with any other related procedure between the two States, including the present case before the Court.

Costa Rica v. Nicaragua. On 25 February 2014, the Republic of Costa Rica instituted proceedings against the Republic of Nicaragua with regard to a "[d]ispute concerning maritime delimitation in the Caribbean Sea and the Pacific Ocean". In its Application, Costa Rica requests the Court "to determine the complete course of a single maritime boundary between all the maritime areas appertaining, respectively, to Costa Rica and to Nicaragua in the Caribbean Sea and in the Pacific Ocean, on the basis of international law". The Applicant "further requests the Court to determine the precise geographical co-ordinates of the single maritime boundaries in the Caribbean Sea and in the Pacific Ocean". Costa Rica explains that "[t]he coasts of the two States generate overlapping entitlements to maritime areas in both the Caribbean Sea and the Pacific Ocean" and that "[t]here has been no maritime delimitation between the two States [in either body of water]".

By an Order of 1 April 2014, the Court fixed 3 February 2015 and 8 December 2015 as the respective time-limits for the filing of a Memorial by the Republic of Costa Rica and a Counter-Memorial by the Republic of Nicaragua.

Republic of the Marshall Islands v. China, the Democratic People's Republic of Korea, France, India, Israel, Pakistan, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America. On 24 April 2014, the Government of the Republic of the Marshall Islands simultaneously filed in the Registry of the Court separate Applications against nine States accusing them of not fulfilling their obligations with respect to the cessation of the nuclear arms race at an early date and to nuclear disarmament. While these nine Applications all relate to the same matter, the Republic of the Marshall Islands distinguishes between those three States (India, Pakistan and the United Kingdom of Great Britain and Northern Ireland) which have recognized the compulsory jurisdiction of the Court (pursuant to Article 36, paragraph 2, of the Statute of the Court), and those which have not done so. Within each of these two groups, the Republic of the Marshall Islands further distinguishes between those States which have currently ratified the Treaty on Non-Proliferation of Nuclear Weapons (hereafter: "NPT"), and those which have not done so. The Republic of the Marshall Islands recalls that it acceded to that Treaty as a Party on 30 January 1995.

By an Order of 16 June 2014, the Court fixed 16 March 2015 and 16 December 2015 as respective time-limits for the filing of a Memorial by the Republic of the Marshall Islands and a Counter-Memorial by the United Kingdom of Great Britain and Northern Ireland; as well as 16 December 2014 and 16 June 2015 as respective time-limits for the filing of a Memorial by the Republic of the Marshall Islands and a Counter-Memorial by the Republic of India

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5. News

ICJ President addresses the UN General Assembly. On 31 October 2013, H. E. Judge Peter Tomka, President of the ICJ, presented to the UN General Assembly the annual report, stressing its role as the forum of choice of the international community of States for the peaceful settlement of every kind of international dispute over which it has jurisdiction". He informed that during the period under review, as many as 11 contentious cases had been pending, the Court had delivered two Judgments –Territorial and Maritime Dispute (Nicaragua v. Colombia) and the second in the Frontier Dispute (Burkina Faso/Niger)- and six Orders; and two new cases had been submitted to the Court (Plurinational State of Bolivia v. Republic of Chile; Republic of Nicaragua v. Republic of Colombia). The President stated that there were currently ten cases on the Court's General List. He also observed that, since 15 April 2013, the Court had been sitting in the renovated and modernized Great Hall of Justice, where it enjoyed improved technical facilities offering a wider range of possibilities.

Registrar re-elected. On 3 February 2014, the Court re-elected Mr. Philippe Couvreur, of Belgian nationality, to the post of Registrar, for a term of seven years as from 10 February 2014.

INTERNATIONAL CRIMINAL LAW

II. INTERNATIONAL CRIMINAL COURT (ICC) (www.icc-cpi.int)

1. News

Resignation of ICC Judge Hans-Peter Kaul On 30 June 2014, the ICC announced the resignation of Judge *Hans-Peter Kaul* for health reasons.

Slovakia ratifies amendments to the Rome Statute On 28 April 2014, the State Secretary of the Ministry of Foreign and European Affairs of the Slovak Republic, deposited at the United Nations the instruments of acceptance of amendments to the Rome Statute on the crime of aggression and on article 8 related to war crimes.

Prosecutor opesn a preliminary examination in Ukraine Mrs Fatou Bensouda, Prosecutor of the ICC, opened on 17 April 2014 a preliminary examination of the situation as a matter of policy.

Ukraine accepts ICC jurisdiction over alleged crimes committed between 21 November 2013 and 22 February 2014 The Registrar of the ICC received on 17 April 2014 a declaration by Ukraine accepting the ICC's jurisdiction, based on article 12(3) of the Rome

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Statute enabling a State not party to the Statute to accept the Court's jurisdiction, concerning alleged crimes committed in the period between 21 November 2013 and 22 February 2014.

The Prosecutor v. Uhuru Muigai Kenyatta On 31 March 2014, the Trial Chamber V(b) adjourned the commencement date of the trial against *Uhuru Muigai Kenyatta*, who is charged as an indirect co-perpetrator with five counts of crimes against humanity allegedly committed in 2007-2008, to 7 October 2014 giving the Governmenet of Kenya the opportunity to provide additional records that are considered by the Prosecution to be relevant for the allegation.

Croatia ratifies amendments to the Rome Statute On 20 December 2013, the Ambassador *Vladimir Drobnjak*, Permanent Representative of Croatia to the United Nations, deposited at the United Nations the instruments of acceptance of amendments to the Rome Statute on the crime of aggression and on article 8 related to war crimes.

New ICC judge On 12 December 2013, *Geoffrey A. Henderson* from Trinidad and Tobago was sworn in after having been elected at the twelfth session of the Assembly of States Parties to the Rome Statute (ASP) in November 2013 and commenced his service on 1 February 2014. His turn will last until 10 March 2021. He is the sucessor of Judge *Anthony Thomas Aquinas Carmona* after the latter was elected President of Trinidad and Tobago.

Belgium ratifies amendments to the Rome Statute On 26 November 2013, Belgium deposited at the United Nations the instruments of acceptance of the amendments to the Rome Statute on the crime of aggression and on article 8 related to war crimes.

Sweden contributes €4.2 million to the Trust Fund for Victims (TFV) On 22 November 2013, it was published that the Swedish international development agency (Sida) and the TFV signed an agreement over three years with a total contribution by Sida of €4.2 million. This is until now the single largest contribution of a State Party to the TFV.

Ratifications of amendments to the Rome Statute on the crime of aggressino and article 8 On 1 October 2013 Andorra, Cyprus, Slovenia, and Uruguay deposited their instruments of ratification of the amendments to the Rome Statute on the crime of aggression and to article 8 of the Rome Statute on war crimes.

Rations of amendments to the Rome Statute on the crime of aggression and article 8 On 10 June 2013, the then Minister for Foreign Affairs of the Federal Republic of Germany, H.E. Mr *Guido Westerwelle* deposited the instruments of ratification of the amendments to the Rome Statute on the crime of aggression and on article 8 on war crimes, as well as the Permanent Representative of Botswana to the United Nations, H.E. Mr *Charles Thembani Ntwaagae*.

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2. Judgments

The Prosecutor v. Germain Katanga On 7 March 2014, the Trial Chamber II of the ICC found *Germain Katanga* guilty of one count of crime against humanity (murder) and four war crimes (murder, attacking a civilian population, destroying property and pillage), all of them committed in the Ituri district of the Democratic Republic of the Congo (DRC). Based on witness testimonies and evidence presented, the Chamber found that *Germain Katanga* had contributed significantly to the crimes committed by the Ngiti militia assisting them to plan the operation against the village of Bogoro and reinforced their strike capability. On 23 May of 2014, the Trial Chamber II sentenced *Germain Katanga* to a total of 12 years of prison, deducting the time spent in detention at the ICC from his sentence.

3. Procedural Incidents

Situation in the Republic of Korea (RoK) On 23 June 2014, the Prosecutor of the ICC Fatou Bensouda, announced to conclude the preliminary examination of the situation in the Republic of Korea (RoK) due to the fact that requirements for initiating an investigation had not been met. The situation in RoK included the assessment of incidents in the Yellow Sea.

The Prosecutor v. Laurent Gbagbo The Pre-Trial Chamber I of the ICC confirmed, on 12 June 2014, four charges of crimes against humanity against Laurent Gbagbo, former President of Côte d'Ivoire including murder, rape, other inhumane acts or attempted murder, and persecution. The Trial Chamber committed him for trial before a Trial Chamber.

The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi The Appeals Chamber of the ICC confirmed on 21 May 2014 the decision of the Pre-Trial Chamber I that had declared admissible the case against *Saif Al-Islam Gaddafi*.

The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus On 4 October 2013, the Trial Chamber IV of the ICC decided to terminate the proceedings against Saleh Jerbo due to his death on 19 April 2013.

The Prosecutor v. William Samoei Ruto and Joshua Arap Sang On 10 September 2013, the Trial Chamber V(a) opened the trial in the aforementioned case. Messrs. Ruto and Sang are both accused of crimes against humanity allegedly committed in Kenya during post-election violence in 2007-2008.

The Prosecutor v. Laurent Gbagbo On 11 June 2013, the Pre-Trial Chamber I concluded that it had not been demonstrated that Mr. Gbagbo was being prosecuted in Côte d'Ivoire. Therefore, it rejected the challenge to the admissibility of the case against Laurent Gbagbo

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who allegedly committed crimes against humanity in the territory of Côte d'Ivoire between December 2010 and April 2011.

III. MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS (MICT) (www.unmict.org)

The Hague Branch of the Mechanism for International Criminal Tribunals (MICT or Mechanism) was launched on 1 July 2013. The establishment of the Mechanism is an important part of the ICTY's and ICTR's Completion Strategies. The Mechanism is tasked with the continuation of essential functions of both Tribunals and the preservation of their legacy. The functions of the Hague Branch of the Mechanism will include: maintaining protective measures granted to victims and witnesses by the ICTY, hearing any appeals from Judgments or sentences issued by the ICTY that fall within the Mechanism's competence, as well as handling requests for review of Judgments, as mandated by the Security Council. The Mechanism will maintain the Tribunal's vital role in assisting national jurisdictions by granting access to evidence, providing assistance in tracking fugitives in cases which have been transferred to national authorities, and monitoring cases transferred to national jurisdictions to ensure fair and impartial adjudication. Responsibility for the preservation and management of the ICTY's archives will also be an essential function for the Mechanism as the ICTY, working alongside the Mechanism, nears the completion of its mandate.

The Arusha Branch of the MICT, which took on functions derived from the ICTR, commenced operations on 1 July 2012.

1. Trial Chamber

On 18 July 2014, the Trial Chamber, by majority, acquitted Radislav Krstić, former Commander of the Drina Corps of the Bosnian Serb Army (VRS), of one charge of contempt of the Tribunal for failing to comply with, or to show good cause why he could not comply with, a subpoena in which he was ordered to testify in the case of Radovan Karadžić.

On 28 August 2014, the Chamber appointed by order of the Vice-President found by majority, Judge Liu dissenting, that Judge Frederik Harhoff had demonstrated an unacceptable appearance of bias in favour of conviction. He is therefore disqualified from the case of Vojislav Šešelj. The Chamber's decision follows Vojislav Šešelj's defence motion of 9 July 2013 seeking the disqualification of Judge Harhoff from the bench in his case, on the basis of a letter that the Judge wrote dated 6 June 2013. The Defence contended that the letter showed the Judge's bias in the current proceedings. The Majority, Judge Liu dissenting, concluded that by "*referring to a "set practice" of convicting*

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accused persons without reference to an evaluation of the evidence in each individual case" Judge Harhoff had demonstrated an unacceptable appearance of bias.
On 31 October 2013, acting President of the Tribunal, Judge Carmel Agius, issued a decision assigning Judge Mandiaye Niang to join the Bench in the case of Vojislav Šešelj.

On 20 February 2014, Trial Chamber II dismissed Goran Hadžić's motion for acquittal on charges from eight counts of the indictment against him. The Chamber's oral ruling was delivered pursuant to Rule 98 *bis* of the Tribunal's Rules of Procedure and Evidence, which states that, after the close of the Prosecutor's case, the Trial Chamber shall, by oral decision, and after hearing the oral submissions of the parties, enter a Judgment of acquittal on any count if there is no evidence capable of supporting a conviction.

On 15 April 2014, Trial Chamber I rejected in their entirety Ratko Mladić's submissions for acquittal made under Rule 98 *bis* of the Tribunal's Rules of Procedure and Evidence. Rule 98 *bis* states that after the close of the Prosecutor's case, the Trial Chamber shall, by oral decision, and after hearing the submissions of the parties, enter a Judgment of acquittal on any count if there is no evidence capable of supporting a conviction. Ratko Mladić, former Commander of the Bosnian Serb Army (VRS) Main Staff, stands accused of genocide and a multitude of other crimes committed against Bosnian Muslim, Bosnian Croat and other non-Serb civilians in Bosnia and Herzegovina (BiH) from May 1992 to late 1995.

2. Appeals Chamber

On 11 July 2013, the Appeals Chamber unanimously reversed Radovan Karadžić's acquittal for genocide in the municipalities of Bosnia and Herzegovina, which was entered at the close of the Prosecution case. The Appeals Chamber remanded the matter to the Trial Chamber for further action consistent with the Appeal Judgment.

On 23 January 2014, the Appeals Chamber partially granted the appeals of both the Defence and the Prosecution in the Šainović *et al.* case involving four Serbian senior officials from the political, military, and police establishment of the Federal Republic of Yugoslavia (FRY) and Serbia. In its Judgment, the Appeals Chamber reduced the sentence of Nikola Šainović from 22 to 18 years of imprisonment, the sentence of Sreten Lukić from 22 to 20 years of imprisonment, and of Vladimir Lazarević from 15 to 14 years in prison. The 22 year sentence of Nebojša Pavković was affirmed.

On 27 January 2014, the Appeals Chamber pronounced its Judgment in the case of Vlastimir Đorđević, confirming his guilt for crimes committed by Serbian forces during a campaign of terror and violence against Kosovo Albanians during the conflict in Kosovo. It partially granted the appeals of both the Defence and the Prosecution and reduced Đorđević's sentence from 27 years to 18 years in prison.

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3. News

President and Vice-President re-elected. On 1 October 2013, Judge Meron and Judge Agius were re-elected as President and Vice-President of the ICTY, for two year terms starting 17 November 2013.

ICTY President addressed UN General Assembly and Security Council. On 14 October 2013, President Theodor Meron presented the Tribunal's twentieth annual report to the UN General Assembly. President Meron reported on measures taken to implement the Tribunal's Completion Strategy and to effect the institution's orderly and efficient closure. Presenting the Member States with an update on the progress made in judicial proceedings, the President underscored that the Tribunal has '*rendered more Judgments in the year ending 1 August 2013 than in almost any previous reporting period.*' He noted that five Trial Chamber Judgments had been delivered, along with three Appeals Chamber Judgments, a Judgment on appeal from an acquittal pursuant to Rule 98 bis of the ICTY's Rules of Procedure and Evidence and four Judgments in contempt cases. President Meron added that four cases are currently at trial and seven cases are pending an appeal. He went on to note that any appeals in the Mladić, Karadžić, Hadžić and Šešelj cases, which are currently at trial, will fall under the jurisdiction of the MICT. The President noted that work on the seven remaining appeals cases is anticipated to be completed in all but one case by early 2015. He added that appeal Judgments in the Đorđević case and in the multi-accused Šainović et al. case are expected by the end of this year and a further four appeal Judgments are expected by early 2015. The one remaining appeals case, that of Prlić et al., involving six accused, is forecast to be completed by mid-2017.

On 5 December 2013, the Tribunal's President updated the United Nations Security Council on the progress being made by the ICTY towards the completion of its mandate.*"The Tribunal has continued to make progress in completing the last cases before it. Since my last completion strategy report, the Tribunal has rendered five Judgments,"* the President told the Council. With regard to the remaining ongoing proceedings, the President told the Council that *"almost all ICTY cases will have been completed by 31 December 2014."* Forecast Judgment delivery dates were unchanged in seven of the Tribunal's eleven remaining cases, the President said. *"The delays in three of the remaining four cases are of a very limited nature"*. He explained that the Judgment in the Karadžić case was expected to be issued in October 2015 instead of July 2015, while both the Šainović *et al.* and Đorđević appeal Judgments would be rendered in January 2014, one month later than previous forecasts. The final case, of Vojislav Šešelj, has experienced more severe delays, resulting from the disqualification of one of the judges in the trial. Another judge was subsequently appointed to the trial bench, and is now familiarising himself with the trial record and reviewing related documents. The President indicated that he would provide more information about this case in his next report to the Council. President Meron noted that several of the delays that he reported and the inability to complete all ICTY judicial work by the end of 2014 were *"directly attributable to factors*

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*outside the case management process, and reflect the inherent uncertainty in predicting the time needed to complete Judgments in highly complex cases". In addition, the President stressed the impact of the unique circumstances of the Tribunal, "which is located thousands of kilometres from the scene of alleged crimes, required to translate a myriad of documents into multiple languages, and called to handle volumes of evidence that are almost unheard of in domestic criminal prosecutions." He added that, despite these and other challenges, the Tribunal is making every effort to ensure that forecast completion dates for cases remain on schedule.*Noting that the terms of office of all of the ICTY Judges expire at the end of this month, the President referred to his recent requests to the Council for extensions of the Judges' terms of office through the period in which their last trial or appeal is expected. He underscored that in making such requests he was *"guided by consideration of efficiency and maximum transparency. And indeed extensions that correspond to the lengths of the judicial proceedings on which the Judges are engaged will bolster the Tribunal and also reduce demands on the Security Council's valuable time."*

On 5 June 2014, the Tribunal's President, addressed the United Nations Security Council on the progress of the ICTY towards the completion of its mandate. The President reported on the status of the Tribunal's nine remaining cases. With regard to the ongoing trials, the President said: "*Three of them—the trials of the late-arrested accused, Messrs. Hadžić, Karadžić, and Mladić—are continuing in line with past forecasts for Judgment delivery, although all three trials are expected to continue past 31 December 2014, as I have previously informed this Council*." He also noted that the fourth case currently at trial stage of proceedings—that of Vojislav Šešelj—was a case with special challenges. President Meron informed the Council that, since his last report, two appeals Judgments had been handed down, and that by the end of the year two more were expected. The President reiterated that, despite the Tribunal's continuing efforts, it was currently anticipated that the Tribunal will not complete the appeals in the remaining three appeal cases by 31 December 2014, and added that one of these appeal cases had experienced a setback in its projected timeline.

IV. SPECIAL COURT FOR SIERRA LEONE (SCSL) – RESIDUAL SPECIAL COURT FOR SIERRA LEONE (RSCSL) (http://www.rscsl.org)

1. News

The Special Court for Sierra Leone completed its mandate and closed on 31 of December 2013. As of 1 of January 2014, the Residual Special Court for Sierra Leone (RSCSL) succeeded the SCSL in order to manage the ten residual functions that include witness protection, supervision of prison sentences, and the management of the SCSL archives. The RSCSL was established by an agreement signed on 11 August 2010 between the Government of Sierra Leone and the United Nations, has its interim seat in The Hague and

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an office in Sierra Leone for witness protection and victim support. Ten of the total sixteen judges working for the RSCSL are appointed by the United Nations and six by the Government of Sierra Leone. On 3 December 2013, *Justice Philip N. Waki* of Kenya was elected President and *Justice Jon Kamanda* of Sierra Leone is the new Vice President of the RSCSL.

2. Residual functions of the RSCSL

The ten residual functions are grouped into two categories.
Ongoing Functions

- Maintenance, preservation and management of the archives
- Witness Protection and Support
- Assistance to National Prosecution Authorities
- Supervision of Prison Sentences/Pardons/Commutations/Early Releases

Ad hoc functions

- Review of Convictions and Acquittals until 2055
- Contempt of Court Proceedings
- Defence Counsel and Legal Aid Issues
- Claims for Compensation
- Prevention of Double Jeopardy
- Trial of Johnny Paul Koroma

3. Judgments

Prosecutor v. Charles Ghankay Taylor
On 26 September 2013, the Appeals Chamber of the Special Court for Sierra Leone made its final major decision and decided unanimously to uphold the conviction of former President of Liberia, *Charles Ghankay Taylor* on all eleven counts and upholds the 50-year sentence. Based on an agreement between the Court and the United Kingdom, in October 2013 Mr Taylor was transferred to a prison in the United Kingdom where he serves the remaining 43 years of his sentence. It is the RSCSL's responsibility to inspect annually the detention conditions and to facilitate family visits.

Prosecutor v. Moinina Fofana
On 24th April 2014, President *Justice Philip N. Waki* granted *Moinina Fofana*'s Application for Determination of Eligibility for Consideration for Conditional Early Release and determined that Fofana is eligible for consideration for conditional early release.

Prosecutor v. Eric Koi Senessie
On 4th June 2014, President *Justice Philip N. Waki* granted the Application for Determination of Eligibility for Consideration for Conditional Early Release of *Eric Koi*

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Senessie. The Decision was conditional upon Senessie's completion and execution of Condition Early Release Agreement in accordance with the established procedures.

4. Trial of Johnny Paul Koroma

Mr Koroma is the only indicted person who is not in custody. According to Article 7 of the Residual Special Court Statute, the RSCSL is authorized to refer the case to a competent national jurisdiction for trial. However, if it turns out that the national proceedings were not impartial, the RSCSL may try Koroma subsequently anyhow.

V. EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (ECCC) (http://www.eccc.gov.kh/)

1. News

Ieng Sary, one of the co-accused in Case 002, died on 14 March 2013. The proceedings terminated on the same day.

Budget 2014-2015 On 19 March 2014, the budget for the biennium 2014-2015 was presented after having been endorsed by the Group of Interested States: US$ 31.6 million for 2014 with national contributions amounting to US$ 6.4 million. For 2015, the total budget amounts to US$ 28.9 millions with a national component of US$ 6.0 million.
In addition, the UN General Assembly approved on 9 April 2014 US$ 15.5 million *funding reserve* for the EEEC for 2014, following a request by UN Secretary-General *Ban Ki-moon*.

New international Co-Prosecutor On 11 December 2013, *Nicholas Koumjian* was appointed by His Majesty the King Norodom Sihamoni as international Co-Prosecutor, following the nomination by UN Secretary-General *Ban Ki-moon*.

2. Procedural incidents

Case 002/01 On 23 July 2013, the hearing of evidence in case 002/01 ended. The closing statements concluded on 31 October 2013.

Case 002/02 In the second trial against *Khieu Samphan* and *Nuon Chea*, additional charges will be heard. On 4 April 2014, the Trial Chamber decided that the second trial will be based on the following:

Factual allegations:

- Genocide against the Cham and the Vietnamese (excluding crimes committed by the Revolutionary Army of Kampuchea on Vietnamese territory)

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- Forced marriages and rape (nationwide)
- Internal purges

Alleged crime sites
- Treatment of Buddhists (limited to Tram Kok Cooperatives)
- Targeting of former Khmer Republic Officials (implementation limited to Tram Kok
- Cooperatives, 1st January Dam Worksite, S-21 Security Centre and Kraing Ta Chan Security Centre)
- S-21 Security Centre; Kraing Ta Chan Security Centre, Au Kanseng SecurityCentre and Phnom Kraol Security Centre
- 1st January Dam Worksite; Kampong Chhnang Airport Construction site; Trapeang Thma Dam Worksite
- Tram Kok Cooperatives

Case 004 On 24 April 2014, the international Co-Prosecutor *Nicholas Koumjian* filed a Supplementary Submission based on new evidence available, requesting to investigate sexual and gender-based violence in key areas that are under investigation of case 004 as he believes that the factual allegations constitute crimes against humanity.

VI. SPECIAL TRIBUNAL FOR THE LEBANON (STL) (http://www.stl-tsl.org/)

1. News

Composition of Trial Chamber for the Case numbers STL-11-01/PT/PRES and STL-11-01/PT/PRES On 15 January 2014, the President of the STL, *Judge David Baragwanath*, decided on the composition of the Trial Chamber:
- Judge David Re;
- Judge Janet Nosworthy;
- Judge Walid Akoum (alternate judge);
- Judge Micheline Braidi; and
- Judge Nicola Lettieri (alternate judge).

New STL Registrar On 24 July 2013, UN Secretary-General *Ban Ki-moon* nominated *Daryl A. Mundis* as STL Registrar who had served in the Office of the Prosecutor at the International Criminal Tribunal for Yugoslavia as well as at the STL.

Reelection On 12 July 2013, the STL President *David Baragwanath* and Vice-President *Ralph Riachy* were reelected for another 18 months.

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2. Procedural incidents

Prosecutor v Ayyash et al. On 18 June 2014 the trial in the Ayyash et al. case resumed with opening statements of the Prosecution and the Defense.

National and International Arrest Warrant With regard to the case number STL-11-01, the STL issued on 17 April 2014 national and international arrest warrents against *Assad Hassan Sabra, Hussein Hassan Oneissi, Hassan Habib Merhi, Mustafa Amine Badreddine* and *Salim Jamil Ayyash* based on a consolidated indictment of 7 March 2014. The charges are as follows:

- participating in a conspiracy aimed at committing a terrorist act
- being an accomplice to the felony of or committing a terrorist act by means of an explosive device
- being an accomplice to the felony of or committing intentional homicide (of Rafik Hariri) with premeditation by using explosive materials
- being an accomplice to the felony of or committing intentional homicide (of 21 persons in addition to the intentional homicide of Rafik Hariri) with premeditation by using explosive materials
- being an accomplice to the felony of or committing attempted intentional homicide (of 226 persons in addition to the intentional homicide of Rafik Hariri) with premeditation by using explosive materials

Merhi case joined with the Ayyash et al. case On 11 February 2014, the Trial Chamber decided to join the case against Hassan Habib Merhi with the case Ayyash et al.

Start of trial in the case Prosecutor v. Ayyash et al. The trial in the case The Prosecutor v. Ayyash et al. started on 16 January 2014 with opening statements by the Prosecutor, the Legal Representatives of Victims and the Defence counsel for Mr Badreddine and Mr Oneissi. On 22 January 2014, the Prosecution started presenting evidence.

Prosecutor v. Hassan Habib Merhi The Trial Chamber decided on 20 December 2013 to proceed to try Mr. Merhi *in absentia* pursuant to Article 22 of the Statute of STL and rule 106 (A) of the Rules of Procedure and Evidence.

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VII. EUROPEAN FREE TRADE ASSOCIATION COURT (EFTA COURT) (www.eftacourt.int)

1. News

20th anniversary conference On 20 June 2014, more than 200 guests participated at the conference organizaed by the EFTA Court in Luxembourg on the occasion of its 20th anniversary. The keynote speaker was H.E. *Xavier Bettel*, Prime Minister of Luxembourg, who held a speech on 'European Integration'.

Reappointment On 5 July 2013, President *Carl Baudenbacher* was reappointed for a further six-year period as judge of the EFTA Court from 6 September 2013 to 5 September 2019.

2. Judgments

Case E-12/13 EFTA Surveillance Authority v Iceland The Court declared on 11 February 2014, that Iceland failed to implement correctly various paragraphs of articles 1 and 2 of the Act referred to at points 4, 16e and 31 of Annex IX to the Agreement on the European Economic Area within the time prescribed (Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements and crisis management), and failed its obligations under article 7 of the EEA Agreement. Furthermore, Iceland has to bear the costs of the proceedings.

Case E-1/13 Míla ehf. v EFTA Surveillance Authority On 27 January 2014, the Court decided to annul a decision of the EFTA Surveillance Authority (ESA) of 21 November 2012 (Decision No 410/12/COL). Withouth having had initiated the formal investigation procedure, ESA had decided to close a case on whether the lease of an optical fibre constituted unlawful State aid.

Case E-18/13 - EFTA Surveillance Authority v Iceland The Court decided on 6 December 2013 that Iceland failed to adopt the necessary measures to implement the Act referred to at point 21ar of Annex XX to the Agreement on the European Economic Area within the time prescribed (Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants), and failed its obligations under Article 7 of the EEA Agreement. Iceland bears the costs of the proceedings.

Case E-16/13 - EFTA Surveillance Authority v Iceland The Court declared on 6 December 2013 that Iceland failed to implement correctly the Act referred to at point 7b of Annex

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XIX to the Agreement on the European Economic Area within the time prescribed (Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange products). Related to this, Iceland failed to fulfil its obligations under Article 7 of the EEA Agreement. The Court ordered that Iceland bore the costs of the proceedings.

Case E-15/13 - EFTA Surveillance Authority v Iceland On 6 December 2013, the Court decided that Iceland failed to adopt the necessary measures to implement the Act referred to at point 7d of Annex XIX to the Agreement on the European Economic Area (Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers'
interests), and failed to fulfil its obligations under Article 7 of the EEA Agreement. Iceland was to bear the the costs of the proceedings.

Case E-14/13 - EFTA Surveillance Authority v Iceland The Court declared that Iceland failed to fulfil its obligations under articles 31 and 40 of the EEA Agreement by treating differently domestic and cross-border mergers as laid down in Article 51 paragraph 1 of the Icelandic Act No 90/2003 on
Income Tax (lög nr. 90/2003 um tekjuskatt). The Court decided that Iceland bore the proceedings.

Case E-13/13 - EFTA Surveillance Authority v Norway On 2 December 2013, the Court decided that Norway failed to implement correctly into its national legistlation Article 37(1) of the Act referred to at point 23b of Annex IX to the Agreement on the European Economic Area (i.e. Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing), and failed to fulfil its obligations Article 7 of the EEA Agreement. Norway bears the costs of the proceedings.

Case E-11/13 - EFTA Surveillance Authority v Iceland On 15 november 2013, the Court declared that Iceland failed to implement correctly paragraphs of Articles 9 and 10 of the Act referred to at point 13b of Annex IX to the Agreement on the European Economic Area within the time prescribed (Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation), and failed to fulfil its obligations under Article 7 of the EEA Agreement. Furthermore, the Court ordered that Iceland bore the costs of the proceedings.

Case E-10/13 - EFTA Surveillance Authority v Iceland On 15 November 2013, the Court declared that Iceland failed to adopt the necessary measures to implement corretly within the time limit prescribed into its national legislation Articles 2(1)(a)-(d) and 2(2)(a)-(b) of the Act referred to at point 21b of Annex XVIII to the EEA Agreement (Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the

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implementation of the principle for equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)). Iceland will bear the costs of the proceedings.

Case E-9/13 - EFTA Surveillance Authority v Norway On 15 November 2013, the Court declared that Norway did not adopt all the necessary measures to implement the Act referred to at point 16a of Chapter II of Annex XIII to the EEA Agreement within the time prescribed (Commission Directive 2010/48/EU of 5 July 2010 adapting to technical progress Directive 2009/40/EC of the European Parliament and of the Council on roadworthiness tests for motor vehicles and their trailers), and failed to fulfil its obligations under Article 7 of the EEA agreement. Norway bore the costs of the proceedings.

Case E-6/12 - EFTA Surveillance Authority v The Kingdom of Norway On 11 September 2013, the Court delivered a judgment partially upholding an application by the EFTA Surveillance Authority ("ESA") against Norway. It was claimed that a Norwegian administrative practice refusing family benefits in certain cases to workers in Norway constitutes an infringement of the EEA Agreement. First, the Court upheld the application regarding the infringement of Article 1(f)(i) of the

Regulation 1408/71 on the coordination of social security schemes. Norway's argument that the Article is merely a definitional norm, incapable of being infringed by itself was rejected as, according to the Court, Article 1(f)(i) defines the personal scope of the Regulation with regard to members of the family, which is fundamental for a correct application of the choice of law rules of the Regulation. Second, the Court rejected the application on the alleged infringement of Article 76 of the

Regulation. The Court decided that ESA had failed to present sufficient evidence.

3. Advisory Opinion

Case E-26/13 Íslenska ríkið v Atli Gunnarsson The Court gave its advisory opinion on 27 June 2014 with regard to the interpretation of Article 28 EEA Agreement and Article 7 of Directive 2004/28/EC of the European Parliament and of the Council of 29 April 2004 concerning the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

Case E-23/13 Hellenic Capital Market Commission (HCMC) On 9 May 2014, the Court gave an advisory opinion that a requirement that obliges the authority to request information in order to specify facts that give rise to the suspicion is not compatible with Directive 2003/6/EC.

Case E-7/13 - Creditinfo Lánstraust hf. v þjóðskrá lslands og íslenska ríkið On 12 December 2013, the Court delivered its advisory opinion with regard to the interpretation of

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Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 concerning the re-use of public sector information.

Case E-6/13 - Metacom AG v Rechtsanwälte Zipper & Collegen The Court gave on 27 November 2013 its advisory opinion on the subject how to interprete Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of the freedom to provide services,

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VIII. PERMANENT TRIBUNAL OF REVISION OF MERCOSUR (PTR) (http://www.tprmercosur.org/)

1. Advisory Opinion

Res. P/TPR/Nº1/14 On 27 March 2014, the PTR decided to close the proceedings concerning the advisory ppinion requested by the Supreme Court of Justice of Argentina regarding the decisions[1] "Dow Quimica Argentina S.A C/E.N – DGA-" (Opinión Consultiva Nº1/2014. DOW QUÍMICA ARGENTINA S.A C/EN –DGA).

[1] Solicitud de opinión consultiva cursada por la Corte Suprema de Justicia de la Nación Argentina en los Autos

DOI: 10.17103/reei.28.14