CHRONICLE ON INTERNATIONAL COURTS AND TRIBUNALS (JULY 2012 – JUNE 2013)

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Summary: I. INTERNATIONAL COURT OF JUSTICE (ICJ). II. INTERNATIONAL CRIMINAL COURT (ICC). III. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY). IV. INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (ICTR). V. INTERNATIONAL RESIDUAL MECHANISM FOR CRIMINAL TRIBUNALS. VI. SPECIAL COURT FOR SIERRA LEONE (SCSL). VII. EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (ECCC). VIII. SPECIAL TRIBUNAL FOR THE LEBANON (STL). IX. EFTA COURT. X. PERMANENT TRIBUNAL OF REVISION OF MERCOSUR (PTR). XI. PERMANENT COURT OF ARBITRATION (CPA).

INTERNATIONAL JUDICIAL TRIBUNALS

GENERAL JURISDICTION

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

1. Judgments

Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal). On 20 July, the Court delivered its Judgment finding, unanimously, that the Republic of Senegal should submit the case of Mr. Hissène Habré to its competente authorities for the purpose of prosecution, if it does not extradite. The Court considers that the Republic of Senegal, by failing to make immediately a preliminary inquiry into the facts relating to the crimes allegedly committed by Mr. Hissène Habré, has breached its obligation under Article 6, paragraph 2, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984.

Territorial and Maritime Dispute (Nicaragua v. Colombia). On 19 November 2012, the Court delivered the sentence in this decade-long case, declaring that Colombia has sovereignty over the maritime features in dispute and drew a single maritime boundary, so Nicaragua obtained a large maritime area of approximately 90.000 square kilometers.

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Frontier Dispute (Burkina Faso v. Niger). On 16 April 2013, the ICJ delivered its Judgement determining the course of the frontier between the two States in the sector running from the astronomic marker of Tong-Tong to the beginning of the Botou bend.

2. Pendant cases

Maritime Dispute (Peru v. Chile). The public hearings concluded on 14 December 2012, then the ICJ began its deliberation. During the hearings, which opened on 3 December 2012, the delegation of the Republic of Peru was led by H.E. Mr. Allan Wagner, Ambassador, former Minister for Foreign Affairs, former Minister of Defence, former Secretary-General of the Andean Community, Ambassador of Peru to the Kingdom of the Netherlands, as Agent; and the delegation of the Republic of Chile was led by H.E. Mr. Albert van Klaveren Stork, Ambassador, former Vice-Minister for Foreign Affairs, Professor at the University of Chile, as Agent. At the end of the oral proceedings, the Parties presented the following final submissions to the Court. For the Republic of Peru: "For the reasons set out in Peru's Memorial and Reply and during the oral proceedings, the Republic of Peru requests the Court to adjudge and declare that: (1) The delimitation between the respective maritime zones between the Republic of Peru and the Republic of Chile, is a line starting at 'Point Concordia' (defined as the intersection with the low-water mark of a 10-kilometre radius arc, having as its centre the first bridge over the River Lluta of the Arica-La Paz railway) and equidistant from the baselines of both Parties, up to a point situated at a distance of 200 nautical miles from those baselines, and (2) Beyond the point where the common maritime border ends, Peru is entitled to exercise exclusive sovereign rights over a maritime area lying out to a distance of 200 nautical miles from its baselines." For the Republic of Chile: "Chile respectfully requests the Court to: dismiss Peru's claims in their entirety; adjudge and declare that: the respective maritime zone entitlements of Chile and Peru have been fully delimited by agreement; those maritime zone entitlements are delimited by a boundary following the parallel of latitude passing through the most seaward boundary marker of the land boundary between Chile and Peru, known as Hito No. 1, having a latitude of 18° 21' 00" S under WGS84 Datum; and Peru has no entitlement to any maritime zone extending to the south of that parallel."

Frontier dispute (Burkina Faso v. Níger). The public hearings concluded on 17 October 2012.

Whaling in the Antarctic (Australia v. Japan). On Tuesday 20 November 2012, New Zealand, invoking Article 63 of the Statute of the Court, filed a declaration of intervention in the case. To avail itself of the right of intervention conferred by Article 63 of the Statute, New Zealand relies on its "status as a party to the International Convention for the Regulation of Whaling". New Zealand contends that "[a]s a party to the Convention, [it] has a direct interest in the construction that might be placed upon the Convention by the Court in its decision in these proceedings".In its declaration, New Zealand further explains that its intervention is directed to questions of the construction, in particular, of Article VIII

of the Convention, arising in the case. That article provides, *inter alia*, that "any Contracting Government may grant to any of its nationals a special permit authorizing that national to kill, take and treat whales for purposes of scientific research subject to such restrictions as to number and subject to such other conditions as the Contracting Government thinks fit . . .". "Given its long-standing participation in the work of the International Whaling Commission, and its views with respect to the interpretation and application of the Convention, including whaling under Special Permit, New Zealand has determined that it is necessary for it to intervene in this case in order to place its interpretation of the relevant provisions of the Convention before the Court", New Zealand writes in its declaration. At the end of its declaration, New Zealand provides the following summary of its interpretation of Article VIII: "(a) Article VIII forms an integral part of the system of collective regulation established by the Convention. (b) Parties to the Convention may engage in whaling by Special Permit only in accordance with Article VIII. (c) Article VIII permits the killing of whales under Special Permit only if: i. an objective assessment of the methodology, design and characteristics of the programme demonstrates that the killing is only "for purposes of scientific research"; and ii. the killing is necessary for, and proportionate to, the objectives of that research and will have no adverse effect on the conservation of stocks; and iii. the Contracting Government issuing the Special Permit has discharged its duty of meaningful cooperation with the Scientific Committee and the IWC. (d) Whaling under Special Permit that does not meet these requirements of Article VIII, and not otherwise permitted under the Convention, is prohibited." New Zealand underlines in its declaration "that it does not seek to be a party to the proceedings" and "confirms that, by availing itself of its right to intervene [under Article 63 of the Statute], it accepts that the construction given by the judgment in the case will be equally binding upon it". In accordance with Article 83 of the Rules of Court, Australia and Japan have been invited to furnish written observations on New Zealand's declaration of intervention. The time-limit for the filing of such observations has been fixed at Friday 21 December 2012.

In an Order of 6 February 2013, the Court authorized New Zealand to intervene in the case. In particular, the Court: (1) decides, unanimously, that the Declaration of Intervention filed by New Zealand, pursuant to Article 63, paragraph 2, of the Statute, is admissible; (2) fixes, unanimously, 4 April 2013 as the time-limit for the filing by New Zealand of the written observations referred to in Article 86, paragraph 1, of the Rules of Court; (3) authorizes, unanimously, the filing by Australia and Japan of written observations on these written observations of New Zealand and fixes 31 May 2013 as the time-limit for such filing. The subsequent procedure was reserved for further decision. On 11 April 2013, the Court decided to hold public hearings from 26 June to 16 July 2013.

Temple of Preah Vihear (Cambodia v. Thailand). On 19 April 2013, the public hearings were concluded, so the Court began its deliberation. During the hearings, which opened on 15 April 2013 the delegation of Cambodia was led by H.E. Mr. Hor Namhong, Deputy Prime Minister and Minister for Foreign Affairs and International Co-operation, as Agent; and the delegation of Thailand was led by H.E. Mr. Virachai Plasai, Ambassador

Extraordinary and Plenipotentiary of the Kingdom of Thailand to the Kingdom of the Netherlands, as Agent.

Final submissions for Cambodia: "Rejecting the submissions of the Kingdom of Thailand, and on the basis of the foregoing, Cambodia respectfully asks the Court, under Article 60 of its Statute, to respond to Cambodia‟s request for interpretation of its Judgment of 15 June 1962. In Cambodia´s view: the Temple of Preah Vihear is situated in territory under the sovereignty of Cambodia" (first paragraph of the operative clause), which is the legal consequence of the fact that the Temple is situated on the Cambodian side of the frontier, as that frontier was recognized by the Court in its Judgment. Therefore, the obligation incumbent upon Thailand to withdraw any military or police forces, or other guards or keepers, stationed by her at the Temple, or in its vicinity on Cambodian territory‟ (second paragraph of the operative clause) is a particular consequence of the general and continuing obligation to respect the integrity of the territory of Cambodia, that territory having been delimited in the region of the Temple and its vicinity by the line on the Annex I map, on which the Judgment of the Court is based."

Final submissions for Thailand: "In accordance with Article 60 of the Rules of Court and having regard to the Request for Interpretation of the Kingdom of Cambodia and its written and oral pleadings, and in view of the written and oral pleadings of the Kingdom of Thailand, the Kingdom of Thailand requests the Court to adjudge and declare: that the Request of the Kingdom of Cambodia asking the Court to interpret the Judgment of 15 June 1962 in the case concerning the *Temple of Preah Vihear (Cambodia* v. *Thailand)* under Article 60 of the Statute of the Court does not satisfy the conditions laid down in that Article and that, consequently, the Court has no jurisdiction to respond to that Request and/or that the Request is inadmissible; in the alternative, that there are no grounds to grant Cambodia´s Request to construe the Judgment and that there is no reason to interpret the Judgment of 1962; and to formally declare that the 1962 Judgment does not determine with binding force the boundary line between the Kingdom of Thailand and the Kingdom of Cambodia, nor does it fix the limit of the vicinity of the Temple."

Costa Rica v. Nicaragua. By two separate Orders dated 17 April 2013, the Court joined the proceedings in both cases Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica). In its two Orders, the Court emphasized that it considered it appropriate to join the proceedings in the cases, "in conformity with the principle of the sound administration of justice and with the need for judicial economy". The Court has joined proceedings on two occasions in the past (the cases concerning South West Africa (Ethiopia v. South Africa; Liberia v. South Africa) and the cases concerning the North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)), even though its Rules at that time made no express provision for that possibility. The joinder resulted, in particular, in the holding of a single set of hearings in the cases concerned, and in the delivery of a single Judgment.

On 1 May 2013, the Court ruled on the counter-claims submitted by Nicaragua: it found that the first claim was without object, that the second and third claims are inadmissible and that there is no need for it to entertain the fourth claim. In that Order, the Court found, unanimously, that there were no need for it to adjudicate on the admissibility of Nicaragua's first counter-claim as such, since that claim has become without object by reason of the fact that the proceedings in the Costa Rica v. Nicaragua and Nicaragua v. Costa Rica cases were joined by an Order of the Court dated 17 April 2013. That claim will therefore be examined as a principal claim within the context of the joined proceedings. In its first counter-claim, Nicaragua requested the Court to declare that "Costa Rica bears responsibility to Nicaragua" for the impairment of navigation on the San Juan River and for the damage to the environment caused by the construction of a road next to its right bank by Costa Rica in violation of its obligations stemming from the 1858 Treaty of Limits and various treaty or customary rules relating to the protection of the environment and good neighbourliness.

In its Order, the Court also unanimously found that the second and third counter-claims were inadmissible as such and do not form part of the current proceedings, since there is no direct connection, either in fact or in law, between those claims and the principal claims of Costa Rica. In its second counter-claim, Nicaragua asked the Court to declare that it "has become the sole sovereign over the area formerly occupied by the Bay of San Juan del Norte". In its third counter-claim, it requested the Court to find that "Nicaragua has a right to free navigation on the Colorado Branch of the San Juan de Nicaragua River until the conditions of navigability existing at the time the 1858 Treaty was concluded are re-established".

3. New cases

Equatorial Guinea v. Republic of France. On 25 September 2012, the Republic of Equatorial Guinea filed in the Registry of the ICJ a document entitled "Application instituting proceedings including a request for provisional measures", seeking the annulment by the Government of the French Republic of the proceedings and investigative measures against Mr. Teodoro Obiang Nguema Mbasogo, President of the Republic of Equatorial Guinea, and Mr. Teodoro Nguema Obiang Mangue, Guinean Minister of Agriculture and Forestry, the current Vice-President of the Republic of Equatorial Guinea.

In this document, Equatorial Guinea asserts that those procedural actions violate the principles of equality between States, non-intervention, sovereignty and respect for immunity from criminal jurisdiction. The Republic of Equatorial Guinea therefore asks the Court "to put an end to these breaches of international law" by ordering France, *inter alia*, to "bring a halt to [the] criminal proceedings" and to "take all measures necessary to nullify the effects of the arrest warrant issued against the Second Vice-President of Equatorial Guinea and of its circulation". In its "request for provisional measures", Equatorial Guinea requests the Court, in particular, to "order . . . the return . . . of the property and premises . ..

belonging to the Republic of Equatorial Guinea" and seized by the French judges in the context of the investigation.

Equatorial Guinea proposes to found the Court's jurisdiction to settle this dispute "on the consent of the French Republic, which will certainly be given", pursuant to Article 38, paragraph 5, of the Rules of Court. Under the terms of that provision:

> *"When the applicant State proposes to found the jurisdiction of the Court upon a consent thereto yet to be given or manifested by the State against which such application is made, the application shall be transmitted to that State. It shall not however be entered in the General List, nor any action be taken in the proceedings, unless and until the State against which such application is made consents to the Court's jurisdiction for the purposes of the case."*

Bolivia v. Chile. On 24 April 2013, the Plurinational State of Bolivia instituted proceedings against the Republic of Chile, concerning a dispute in relation to "Chile's obligation to negotiate in good faith and effectively with Bolivia in order to reach an agreement granting Bolivia a fully sovereign access to the Pacific Ocean". The Application contains a summary of the facts— starting from the independence of Bolivia in 1825 and continuing until the present day— which, according to Bolivia, are "the main relevant facts on which this claim is based", and which must be provided in any Application under Article 38, paragraph 2, of the Rules of Court. In its Application, Bolivia states that the subject of the dispute lies in "(a) the existence of that obligation, (b) the non-compliance of that obligation by Chile and (c) Chile's duty to comply with the said obligation". Bolivia asserts inter alia that "beyond its general obligations under international law, Chile has committed itself, more specifically through agreements, diplomatic practice and a series of declarations attributable to its highest-level representatives, to negotiate a sovereign access to the sea for Bolivia". According to Bolivia, "Chile has not complied with this obligation and . . . denies the existence of its obligation". Bolivia accordingly "requests the Court to adjudge and declare that: (a) Chile has the obligation to negotiate with Bolivia in order to reach an agreement granting Bolivia a fully sovereign access to the Pacific Ocean; (b) Chile has breached the said obligation; (c) Chile must perform the said obligation in good faith, promptly, formally, within a reasonable time and effectively, to grant Bolivia a fully sovereign access to the Pacific Ocean". As the basis for the jurisdiction of the Court, the Applicant invokes Article XXXI of the American Treaty on Pacific Settlement (Pact of Bogotá) of 30 April 1948, to which both States are parties. This Article provides that: "In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory ipso facto, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a judicial nature that arise among them concerning: (a) the interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute the breach of an international obligation; (d) the nature or extent of the reparation to be made

for the breach of an international obligation." At the end of its Application, Bolivia "reserves [its] right to request that an arbitral tribunal be established in accordance with the obligation under Article XII of the Treaty of Peace and Friendship concluded with Chile on 20 October 1904 and the Protocol of 16 April 1907, in the case of any claims arising out of the said Treaty".

4. News

Election of new Deputy-Registrar. At a private meeting held on 11 February 2013, Mr. Jean-Pelé Fomété, of Cameroonian nationality, was elected to the post of Deputy-Registrar. He succees Ms Thérèse de Saint Phalle, of American and French nationality, who resigned on 15 March 2013. Mr. Jean-Pelé Fomété was acting as Registrar of the United Nations Dispute Tribunal in Nairobi, a post which he had held since 2009. Prior to that, he was for seven years Programmes Director in the Registry of the International Criminal Tribunal for Rwanda (ICTR), having spent five years there as Legal Adviser and Special Assistant to the Registrar. Before joining the ICTR, he served inter alia as a Law Clerk at the International Criminal Tribunal for the former Yugoslavia (ICTY) and as Chief of the United Nations Political and Legal Affairs Service at the Ministry of External Relations of Cameroon. In accordance with Article 23 of the Rules of Court, Mr. Jean-Pelé Fomété has been elected for a term of seven years as from 16 March 2013.

Increasing activity of the ICJ. In his address to representatives of Members of the United Nations on the occasion of the "high-level meeting on the rule of law", on 24 September 2012, President Tomka emphasized that the Court had more than doubled its work rate since 1990: "In the last 22 years of its activities, since 1990, the Court has rendered more judgments than during the first 44 years of its existence; 60 as compared to 52". The average number of judgments rendered each year by the Court between 1990 and 2012 (2.72) is thus twice as high as that recorded for the period 1946-1989 (1.18). "Just this year, in addition to one advisory opinion, the Court has rendered three judgments and has advanced its work on the fourth one, and is planning to hold hearings in two further important cases, one concerning a boundary dispute between two African States and the other one regarding a maritime dispute involving two countries from Latin America," President Tomka said.

New Practice Direction. On 11 April 2013, as part of the ongoing review of its procedures and working methods, the Court adopted a new practice direction for use by States, Practice Direction IXquater, which reads as follows:

> *Practice Direction IXquater*
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> *1. Having regard to Article 56 of the Rules of Court, any party wishing to present audio-visual or photographic material at the hearings which was not previously included in the case file of the written proceedings shall submit a request to that effect*

sufficiently in advance of the date on which that party wishes to present that material to permit the Court to take its decision after having obtained the views of the other party.

2. The party in question shall explain in its request why it wishes to present the audio-visual or photographic material at the hearings.

3. A party's request to present audio-visual or photographic material must be accompanied by information as to the source of the material, the circumstances and date of its making and the extent to which it is available to the public. The party in question must also specify, wherever relevant, the geographic co-ordinates at which that material was taken.

4. The audio-visual or photographic material which the party in question is seeking to present shall be filed in the Registry in five copies. The Registrar shall communicate a copy to the other party and inform the Court accordingly.

5. It shall be for the Court to decide on the request, after considering any views expressed by the other party and taking account of any question relating to the sound administration of justice which might be raised by that request."

The Court first adopted practice directions for use by States appearing before it in October 2001 (see Press Release No. 2001/32). In January 2009, it revised Practice Directions III and VI and adopted Practice Direction XIII (see Press Release No. 2009/8). Practice directions involve no alteration to the Rules of Court, but are additional thereto. All practice directions are published on the Court's website, under "Basic Documents".

INTERNATIONAL CRIMINAL LAW

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

1. Judgements

Lubanga case. On 10 July 2012, Trial Chamber I sentenced Thomas Lubanga Dyilo to a total period of 14 years of imprisonment. The Chamber, composed of Judge Adrian Fulford, Judge Elizabeth Odio Benito and Judge René Blattmann, also ordered that the time from Mr Lubanga's surrender to the ICC on 16 March 2006 until then should be deducted from this sentence. Mr Lubanga Dyilo had been found guilty, on 14 March 2012, of conscripting and enlisting children under the age of 15 and using them to participate in hostilities in the Ituri region in the Democratic Republic of the Congo, from 1 September 2002 to 13 August 2003. The Presiding Judge, Adrian Fulford, explained that the Chamber considered the gravity of the crimes in the circumstances of this case, with regard, *inter alia*, to the extent of the damage caused, and in particular "the harm caused to the victims

and their families, the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time and location; and the age, education, social and economic condition of the convicted person". He highlighted that the crimes for which Mr Lubanga had been convicted, comprising the crimes of conscripting and enlisting children under the age of 15 and using them to participate actively in hostilities, are undoubtedly very serious crimes that affect the international community as a whole. The Presiding Judge added that the "vulnerability of children mean that they need to be afforded particular protection that does not apply to the general population, as recognised in various international treaties". Judge Fulford indicated that the Chamber has, however, reflected certain other factors involving Mr Lubanga, namely his notable cooperation with the Court and his respectful attitude throughout the proceedings. Judge Elizabeth Odio Benito has written a separate and dissenting opinion on a particular issue. She disagrees with the Majority's decision to the extent that, in her view, it disregards the damage caused to the victims and their families, particularly as a result of the harsh punishments and sexual violence suffered by the victims of these crimes.

First ICC decision on reparation for victims. On 7 August 2012, Trial Chamber I decided, for the first time in proceedings at the ICC, on the principles that are to be applied to reparations for victims in the context of the case against Thomas Lubanga Dyilo. The Chamber ordered that proposals for reparations, as advanced by the victims themselves, are to be collected by the Trust Fund for Victims and presented to a newly-constituted Trial Chamber I for approval. Reparations will then be implemented through the resources of the Trust Fund for Victims that are available for this purpose. The Chamber considered that it is of paramount importance that the victims, together with their families and communities, participate in the reparations process, and they should be able to express their particular points of view and communicate their priorities. In accordance with the Chamber's decision, the potential beneficiaries of an order for reparations are the direct and indirect victims who suffered harm following the crimes of enlisting, conscripting and using children under the age of 15 in Ituri in the Democratic Republic of Congo (DRC), from 1 September 2002 to 13 August 2003. This includes the family members of direct victims, along with individuals who intervened to help the victims or to prevent the commission of these crimes. The principles established by the Chamber particularly stress the need to ensure that reparations are implemented without any discrimination as regards age, ethnicity or gender, and they should be directed at reconciling the victims of child recruitment and their families and communities in Ituri, whilst preserving their dignity and privacy. Furthermore, the reparations measures are to be formulated taking into account the age of the victims and the sexual violence that they may have suffered, along with the need to rehabilitate the former child soldiers within their communities. The Chamber has determined that in the present case reparations are to be implemented through the Trust Fund for Victims, within the limits of its resources. Trial Chamber I highlighted that in order for the reparations award to have effect, the States Parties – including particularly the DRC – and non-states parties must cooperate, and the Trust Fund will need to receive

sufficient voluntary contributions in order to be able to implement a meaningful and efficient reparations programme. Mr Lubanga has been declared indigent and no assets or property referable to him have been identified to date. It is open to Mr Lubanga to volunteer an apology to the victims, on a public or confidential basis. The Chamber considered that other symbolic reparations may be appropriate; indeed, it decided that Mr Lubanga's conviction and his sentence are examples of relevant symbolic reparations given these events are likely to have significance for the victims and their families and communities. Other forms of reparations may include campaigns to improve the position of victims; issuing certificates that acknowledge the harm they suffered; and outreach and promotional activities, along with educational programmes, which provide information and are directed at reducing the stigmatisation and marginalisation of the victims, avoiding discrimination of any kind.

Gbagbo case. On 12 December 2012, the Appeals Chamber dismissed unanimously the appeal submitted by the Defence of Mr Laurent Gbagbo and confirmed the decision by Pre-Trial Chamber I on the Defence's challenge to the jurisdiction of the ICC. On 15 August 2012, Pre-Trial Chamber I had declined to grant Mr Gbagbo's request to find that the Court would lack jurisdiction over the post-2010 election period and events on which the warrant of arrest and the charges laid against him are based. The Defence alleged that Côte d'Ivoire, which is not a State Party to the Rome Statute – the Court's founding treaty, accepted the ICC's jurisdiction on 18 April 2003 only in relation to the events in 2002 and 2003, and not in relation to future crimes. In the alternative, the Defence asked the Pre-Trial Chamber to stay the proceedings in the case because of alleged violations of Mr Gbagbo's fundamental rights during the period of his detention in Côte d'Ivoire.

The Prosecutor v. Mathieu Ngudjolo Chui. 21 December 2012, Mathieu Ngudjolo Chui was released from custody following his acquittal by Trial Chamber II of the ICC. The Prosecutor however appealed the verdict. The trial against Mathieu Ngudjolo Chui started on 24 November 2009. On 18 December 2012, Trial Chamber II acquitted Mathieu Ngudjolo Chui of three counts of crimes against humanity and seven counts of war crimes allegedly committed during an attack against the Bogoro village (DRC) on 24 February 2003. Judges found that the Prosecution had not proved beyond reasonable doubt that Mathieu Ngudjolo Chui was responsible for the crimes committed during the attack. The Office of the Prosecutor has appealed the verdict. The Chamber also ordered the immediate release of Mathieu Ngudjolo Chui following his acquittal. On 20 December 2012, the Appeals Chamber rejected the Office of the Prosecutor's request to keep Mathieu Ngudjolo Chui in custody until the Chamber decides on its appeal of the immediate release decision.

2. New cases

The Prosecutor v. Bosco Ntaganda. On 22 March 2013, Bosco Ntaganda, against whom the ICC had issued two arrest warrants, surrendered himself voluntarily and is now in the ICC's custody. This is the first time that a suspect has surrendered himself voluntarily to be

in the ICC's custody. On behalf of the Court, the ICC Registrar Silvana Arbia was grateful for the support and cooperation of the Dutch and American authorities, both in Kigali (Rwanda) and in the Netherlands. This operation would not have been possible without the support of the Rwandese authorities.The cooperation of the Congolese State has been essential for the ICC investigations in Ituri and in the Kivus (Democratic Republic of the Congo). The ICC issued two warrants of arrest for Bosco Ntaganda on 22 August 2006 and on 13 July 2012. As the former alleged Deputy Chief of the General Staff of the*Forces Patriotiques pour la Libération du Congo* [Patriotic Forces for the Liberation of Congo] (FPLC), Mr Ntaganda is suspected of seven counts of war crimes (enlistment of children under the age of 15, conscription of children under the age of 15, using children under the age of 15 to participate actively in hostilities; murder, attacks against the civilian population, rape and sexual slavery, and pillaging) and three counts of crimes against humanity (murder, rape and sexual slavery, and persecution) allegedly committed in Ituri (Democratic Republic of the Congo) between 1 September 2002 and the end of September 2003.

3. Arrest warrants

On 13 July 2012, Pre-Trial Chamber II issued a warrant of arrest for Sylvestre Mudacumura, following the request of the ICC Prosecutor. Mr Mudacumura, born in Rwanda and 58 years old, is suspected of committing war crimes, from 20 January 2009 to the end of September 2010, in the context of the conflict in the Kivus, in the Democratic Republic of Congo (DRC). Basing its decision on the evidence presented by the Prosecutor, Pre-Trial Chamber II considered that there are reasonable grounds to believe that Mr Mudacumura is responsible for nine counts of war crimes, consisting of attacking civilians, murder, mutilation, cruel treatment, rape, torture, destruction of property, pillaging and outrages against personal dignity. In accordance with the warrant of arrest, Mr Mudacumura has allegedly engaged his individual criminal responsibility under article 25(3)(b) of the Rome Statute for ordering these nine counts of war crimes.

The same day, Pre-Trial Chamber II also issued a new warrant of arrest for Bosco Ntaganda, following the request submitted on 14 May 2012 by the ICC Prosecutor. Mr Ntaganda, approximately 41 years old, is suspected of committing war crimes and crimes against humanity, from 1 September 2002 to the end of September 2003, in the context of the conflict in Ituri, in the Democratic Republic of the Congo (DRC). Basing its decision on the evidence presented by the Prosecutor, Pre-Trial Chamber II considered that there are reasonable grounds to believe that Bosco Ntaganda is responsible for three counts of crimes against humanity, consisting in murder, rape and sexual slavery, and persecution. In accordance with the warrant of arrest, Bosco Ntaganda allegedly bears individual criminal responsibility for four counts of war crimes consisting of murder, attacks against the civilian population, rape and sexual slavery, and pillaging. The Chamber considered that the arrest of Bosco Ntaganda is necessary to ensure that he will appear before the judges and that he will not obstruct the investigation, as well as to prevent him from continuing

with the commission of a crime within the ICC's jurisdiction. On 22 August 2006, a first arrest warrant was issued for Bosco Ntaganda, for three counts of war crimes allegedly committed in Ituri (the DRC): enlistment of children under the age of 15; conscription of children under the age of 15; and using children under the age of 15 to participate actively in hostilities.

4. New situations

Mali. On 18 July 2012, a delegation from the Government of Mali led by the Minister of Justice, H.E. Malick Coulibaly was received by the ICC Prosecutor. The delegation transmitted a letter by which the Government of Mali, as a State Party to the ICC, refers "the situation in Mali since January 2012" to Office of the Prosecutor and requests an investigation to determine whether one or more persons should be charged for crimes committed since violence erupted on 17 January 2012. The Government of Mali submits that the Malian courts are unable to prosecute or try the perpetrators. The Malian delegation also provided documentation in support of the referral. The referral by the Government of Mali, which is the fourth referral by an African State Party, follows the 30 May 2012 decision by the Malian Cabinet to refer the situation to the ICC. It is in line with the 7 July 2012 request to the ICC by the ECOWAS Contact Group of Mali (composed of Benin, Burkina Faso, Côte d'Ivoire, Liberia, Niger, Nigeria and Togo) to "launch the necessary enquiries in order to identify the perpetrators of these war crimes and to initiate the necessary legal proceedings against them". On 24 April, as instances of killings, abductions, rapes and conscription of children were reported by several sources, I reminded all actors of ICC jurisdiction over Rome Statute crimes committed on the territory of Mali or by Malian nationals. On 1 July, the Prosecutor had stressed that the deliberate destruction of the shrines of Muslim saints in the city of Timbuktu may constitute a war crime under Article 8 of the Rome Statute, and had instructed her Office to immediately proceed with a preliminary examination of the situation in order to assess whether the Rome Statute criteria stipulated under Article 53.1 for opening an investigation are fulfilled.

5. News

Release of ICC staff members detained in Libya. On 2 July 2012, the Libyan authorities released the four ICC staff members who were detained in Zintan, following their visit to Saif Al-Islam Gaddafi on 7 June. The four ICC staff members, Alexander Khodakov, Esteban Peralta Losilla, Melinda Taylor and Helene Assaf were detained in Zintan during the course of a privileged visit to Saif Al-Islam Gaddafi. The visit, authorised by the ICC's judges, had the purpose of preserving the rights of the defence in the case against him before the ICC. The circumstances of the visit became a matter of concern to the Libyan authorities, and have been the subject of investigation by them. Information about that investigation was presented to the Court during the visit of the Attorney General of Libya to The Hague on 22 June. The ICC President confirmed that the information reported by the

Libyan authorities on the visit's circumstances will be fully investigated in accordance with ICC procedures following the return of the four staff members to The Hague.

New States Parties at the Rome Statute. On 13 July, Guatemala became the 122nd State Party to the Rome Statute, and Côte D´Ivoire the 123th on 15 February 2013.

Ratifications of the amendments to the Rome Statute on the crime of aggression. Samoa (25 September 2012), Trinidad and Tobago (15 November 2012) and Luxembourg (13 January 2013), Estonia (28 March 2013), Germany (3 June 2013), Botswana (4 June 2013) became the new State Parties –after Liecthenstein- to ratify the amendments to the Rome Statute on the crime of aggression that were adopted in a historic consensus at the 2010 Review Conference in Kampala. They also ratified the amendments pertaining to article 8 of the Statute, adopted at the same conference.

Memorandum of Understanding. President Judge Sang-Hyun Song and Secretary General of La Francophonie Abdou Diouf signed a Memorandum of Understanding on 28 September 2012. This agreement aims at strengthening and developing cooperation between the two organisations. Under the Memorandum of Understanding, the two organisations will enhance their cooperation in promoting the principles and values enshrined in the Rome Statute – the International Criminal Court's founding treaty, and in particular norms of international humanitarian law. The agreement helps formalize the exchange information and materials between the ICC and the IOF, the organisation and participation in joint meetings and conferences on issues of common interest, as well as the development of training and assistance programmes for legal professionals in IOF member states regarding the Court's work with a view to implementing the complementarity regime.

Contract for the realisation of the ICC permanent premises. On 1 October 2012, the ICC and the Combination Visser & Smit Bouw and Boele & van Eesteren signed a contract for the realisation of the Permanent Premises of the ICC. The construction is expected to start in 2013 and to be completed by 2015. The building is designed by the Danish architecture firm Schmidt Hammer Lassen Architects.

Assembly of States Parties. On 21 November 2012, the Assembly of States Parties to the Rome Statute of the International Criminal Court concluded its eleventh session. The Assembly adopted eight resolutions: on complementarity, cooperation, independent oversight mechanism, permanent premises, victims and reparations, amendments to the Rules of Procedure and Evidence, the "omnibus" resolution, and the 2013 budget. It also adopted the recommendation concerning the election of the Registrar.

New Registrar and new Deputy-Registrar. On 8 March 2013, the plenary session of the ICC elected Herman von Hebel for a period of five years as Registrar. Mr von Hebel succeeds Ms Silvana Arbia, whose current five-year mandate is to end on 16 April

2013. Mr von Hebel is a Dutch national who is currently the Registrar of the Special Tribunal for Lebanon, making him responsible for all activities of the Registry. Until 2009 he worked as the Registrar for the Special Court for Sierra Leone. Previously he worked as a Senior Legal Officer in the International Criminal Tribunal for the Former Yugoslavia and before that in numerous legal advisory positions in the government of the Netherlands. On 16 Novembre 2012, Mr. James Stewart (Canada) was elected as new Deputy-Registrar and sworn in on 8 March 2013.

Resignation of an ICC member. Judge Anthony T. Carmona (Trinidad and Tobago) resigned effective 18 March 2013. The same day, he assumed office as the fifth President of the Republic of Trinidad and Tobago, elected by the Electoral College of the country's Parliament.

Allegations of sexual abuse by former ICC staff member. On 12 April 2013, the ICC opened a formal internal inquiry into allegations communicated by four individuals under the ICC's protection programme that they had been subject to sexual abuse by a former ICC staff member working in the Democratic Republic of the Congo. The Court has a zero tolerance policy towards any form of sexual abuses and is handling these allegations with great rigor and caution. On 20 June 2013, the Registrar commissioned an independent external review of these allegations. Composed of four highly-qualified specialists with extensive experience at a national and international level in the relevant areas the Review team is mandated to establish all facts and circumstances surrounding the allegations of sexual crimes against the four individuals and to identify all responsible persons, including those responsible for exercising managerial oversight over the suspected perpetrator. It will also provide an analysis of the nature and sufficiency of the Court's response to the allegations. Finally, the independent Review team will provide an analysis of and recommendations for the Court's victim and witness protection systems. The results of the external review will be submitted to the ICC Registrar. A public version, giving due consideration to the requirement to ensure protection of all victims and witnesses of the Court, will be provided to the President of the Assembly of the States Parties, Ambassador Tiina Intelmann, and will be publicised.

III. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (WWW.ICTY.ORG)

1. Judgments

The Prosecutor v. Ante Gotovina and Mladen Markač. On 16 November 2012, the Appeals Chamber reversed by majority, Judges Agius and Pocar dissenting, Ante Gotovina's and Mladen Markač's convictions for crimes against humanity and violations of the laws or customs of war and entered verdicts of acquittal. On 15 April 2011, Trial Chamber I found

Mr. Gotovina and Mr. Markač guilty of committing crimes against humanity and violations of the laws or customs of war from July to September 1995 by participating in a joint criminal enterprise to permanently and forcibly remove the Serb civilian population from the Krajina region of Croatia. Mr. Gotovina was sentenced to 24 years of imprisonment, and Mr. Markač was sentenced to 18 years of imprisonment.

The Prosecutor v. Jelena Rašić. On 16 November 2012, the Appeals Chamber affirmed the conviction of Jelena Rašić, former case manager of the Defence team of Milan Lukić, for contempt of the Tribunal and upheld her sentence of 12 months' imprisonment, dismissing the appeal of both the Prosecution and Defence in their entirety.ašić was sentenced on 7 February 2012 to 12 months' imprisonment for having knowingly and wilfully interfered with the administration of justice by procuring false witness statements in exchange for money. This conviction followed the acceptance by the Trial Chamber of a Plea Agreement filed jointly by the Prosecution and the Defence at a hearing at which Rašić pleaded guilty to all five counts of contempt set out in an amended indictment filed jointly by the parties on 24 January 2012.

The Prosecutor v. Haradinaj, Balaj, and Brahimaj. On 29 November 2012, the Trial Chamber acquitted of all charges Ramush Haradinaj, a former commander of the Kosovo Liberation Army (KLA) in the Dukagjin area in Western Kosovo; Idriz Balaj, a former member of the KLA and commander of a special unit known as the Black Eagles, and Lahi Brahimaj, a member of the KLA stationed at Jabllanicë/Jablanica and for a short period Deputy Commander of the Dukagjin Operative Zone. The Trial Chamber ordered their immediate release. The three Accused were charged as members of a Joint Criminal Enterprise ("JCE") or, alternatively, under other modes of individual criminal responsibility, with crimes allegedly committed by them or by other members of the Kosovo Liberation Army ("KLA") in 1998 against Kosovo Serbs, Kosovo Roma/Egyptian, Kosovo Albanian or other civilians in a compound of the KLA in the village of Jabllanicë/Jablanica in Gjakovë/Đakovica municipality. The Indictment has alleged specific incidents of abduction of a total of 16 Kosovo civilians, who, it is alleged, were detained and subjected to torture and cruel treatment at the KLA compound in Jabllanicë/Jablanica. It has been also alleged that eight of these individuals were killed while in KLA custody. These allegations have been the basis of six counts of violations of the laws or customs of war charged against Ramush Haradinaj and Idriz Balaj. Lahi Brahimaj has been charged with four of these counts.

The Prosecutor v. Milan Lukić. On 4 December 2012, the Appeals Chamber affirmed the sentence of life imprisonment for Milan Lukić, and reduced, Judge Pocar and Judge Liu dissenting, the sentence for Sredoje Lukić from 30 to 27 years of imprisonment. Both Accused were convicted for crimes against humanity and violations of the laws or customs of war committed in the eastern Bosnian town of Višegrad in 1992 and 1993. The Appeals Chamber dismissed all of Milan Lukić's eight grounds of appeal, except for two sub-grounds of appeal. First, the Appeals Chamber replaced the Trial Chamber's finding that

59 victims were killed when Milan Lukić set the house of Adem Omeragić on Pionirska Street on fire, with the finding that 53 victims were killed in this incident. Moreover, the Appeals Chamber held that the Trial Chamber had not adequately evaluated how the involvement of some of the Prosecution witnesses with the Women Victims of War Association impacted on these witnesses' credibility. The Appeals Chamber found, however, that those two errors did not impact the judgement.

The Prosecutor v. Zdravko Tolimir. On 12 December 2012, this former Assistant Commander and Chief for Intelligence and Security of the Main Staff of the Bosnian Serb Army (VRS), was sentenced to life imprisonment for genocide, crimes against humanity and war crimes committed in 1995 after the fall of the enclaves of Srebrenica and Žepa, Bosnia and Herzegovina. Tolimir was found guilty by the Majority of Trial Chamber II, Judge Nyambe dissenting, of genocide, conspiracy to commit genocide, murder as a violation of the laws or customs of war, as well as extermination, persecutions, inhumane acts through forcible transfer and murder as crimes against humanity. The Accused was found not guilty of the crime of deportation as a crime against humanity. The Majority did not enter a conviction for murder as crime against humanity on the basis of the principles relating to cumulative convictions.

The Prosecutor v. Momčilo Perišić. On 28 February 2013, the Appeals Chamber reversed by majority, Judge Liu partially dissenting, Momčilo Perišić's convictions for crimes against humanity and violations of the laws or customs of war. During the period relevant to his convictions, Mr. Perišić served as the Chief of the General Staff of the VJ, a position that made him the VJ's most senior officer. On 6 September 2011, Trial Chamber I, Judge Moloto dissenting, found Mr. Perišić guilty of aiding and abetting crimes against humanity and violations of the laws or customs of war committed between August 1993 and November 1995 in the Bosnian towns of Sarajevo and Srebrenica. The Trial Chamber, Judge Moloto dissenting, also found Mr. Perišić guilty as a superior for failing to punish crimes against humanity and violations of the laws or customs of war committed in the Croatian town of Zagreb on 2 and 3 May 1995. Mr. Perišić was sentenced to 27 years of imprisonment.

The Prosecutor v. Mićo Stanišić and Stojan Župljanin. On 27 March 2013, these two high level officials in Bosnian Serb structures, were sentenced to 22 years imprisonment for crimes against humanity and war crimes committed between April and December 1992 in Bosnia and Herzegovina (BiH). Mićo Stanišić, Minister of the Interior of Republika Srpska, was convicted of crimes committed in 20 municipalities throughout BiH: persecution, a crime against humanity, through the underlying acts of killings; torture, cruel treatment, and inhumane acts; unlawful detention; establishment and perpetuation of inhumane living conditions; forcible transfer and deportation; plunder of property; wanton destruction of towns and villages, including destruction or wilful damage done to institutions dedicated to religion and other cultural buildings; and the imposition and maintenance of restrictive and discriminatory measures. He was also convicted of murder and torture as violations of the

laws or customs of war. Stanišić was found not guilty of extermination as a crime against humanity. Stojan Župljanin, during the indictment period, was the Chief of the Regional Security Services Centre of Banja Luka, and from May to July 1992 also a member of the Crisis Staff of the Autonomous Region of Krajina (ARK). The Trial Chamber convicted him of crimes committed in eight municipalities in BiH: persecution, a crime against humanity, through the underlying acts of killings; torture, cruel treatment, and inhumane acts; unlawful detention; establishment and perpetuation of inhumane living conditions; forcible transfer and deportation; plunder of property; wanton destruction of towns and villages, including destruction or wilful damage done to institutions dedicated to religion and other cultural buildings; and the imposition and maintenance of restrictive and discriminatory measures. He was also convicted of extermination as a crime against humanity and murder and torture as violations of the laws or customs of war.

The Prosecutor v. Jadranko Prlić, Bruno Stojić, Milivoj Petković, Valentin Ćorić, Slobodan Praljak and Berislav Pušić. On 29 May 2013, six former high-ranking officials from the wartime Croat entity of Herceg-Bosna were convicted by Trial Chamber III of the Tribunal for crimes against humanity, violations of the laws or customs of war, and grave breaches of the Geneva Conventions committed between 1992 and 1994. All six were found guilty, Judge Antonetti dissenting as to the mode of liability, for their participation in a joint criminal enterprise (JCE) with the objective of removing the Muslim population from the territories on which the Bosnian Croat leadership, acting in concert with the leadership of Croatia, wanted to establish Croat domination. Four of the accused were found guilty of 22 counts of the indictment for war crimes and crimes against humanity in relation to which the Chamber entered a conviction. Jadranko Prlić, former president of the Croatian Defence Council (HVO), and later of the government of the Croatian Republic of Herceg-Bosna, was sentenced to 25 years of imprisonment; Bruno Stojić, former head of the HVO department of defence to 20 years'; Milivoj Petković, chief of the HVO Main Staff and later deputy commander of the HVO forces to 20 years'; and Valentin Ćorić, chief of the Military Police Administration and later on Minister of the Interior to 16 years'. Ćorić was also found guilty of command responsibility for crimes committed in Prozor municipality in October 1992. The Chamber found that the crimes committed in this municipality during that period of time were not part of the joint criminal plan and considered the responsibility of the accused under the mode of liability of command responsibility. Two of the accused were acquitted of some of the charges. Slobodan Praljak, former Assistant Minister of Defence of Croatia and later commander of the Main Staff of the HVO was acquitted by majority, Judge Antonetti dissenting, of two counts. Convicted of 20 counts, he received a sentence of 20 years of imprisonment. Berislav Pušić, former president of the HVO commission in charge of the exchange of prisoners and other persons and head of the HVO Commission in charge of detention facilities, was unanimously acquitted of four counts. Convicted of 18 counts, he was sentenced to 10 years in prison.

The Prosecutor v. Vojislav Šešelj. On 30 May 2013, the Appeals Chamber rejected Vojislav Šešelj's appeal in his contempt of court case, and affirmed his two year conviction for

failure to remove confidential information from his website in violation of orders of a Chamber. Šešelj, the leader of the Serbian Radical Party, is on trial before the Tribunal for alleged war crimes and crimes against humanity committed between 1991 and 1994 against the non-Serb population from large parts of Bosnia and Herzegovina, Croatia and Vojvodina, Serbia.

The Prosecutor v. Jovica Stanišić and Franko Simatović. On 30 May 2013, the majority of Trial Chamber, Judge Picard dissenting, acquitted of all charges Jovica Stanišić and Franko Simatović, former Chief of the Serbian State Security Service and former employee of the Serbian State Security Service. The Trial Chamber ordered their immediate release. The two accused were charged with having directed, organised, equipped, trained, armed and financed units of the Serbian State Security Service which murdered, persecuted, deported and forcibly transferred non-Serb civilians from Bosnia and Herzegovina (BiH) and Croatia between 1991 and 1995.

2. Transfers to serve sentence

On 16 August 2012, Mile Mrkšić, former Colonel within the Yugoslav People's Army (JNA), was transferred to Portugal to serve his 20-year sentence for crimes committed against non-Serb prisoners of war at the hangar of Ovčara near the Croatian town of Vukovar.

3. News

*Completion Strategy.*On 5 October 2012, President Theodor Meron presented the Tribunal's nineteenth annual report to the UN General Assembly. In his first address to the General Assembly since becoming President in November 2011, President Meron reported on steps taken to implement the Tribunal's Completion Strategy and thanked Member States for their substantial support over the years**.** Presenting the Member States with an update on the tremendous progress made in judicial proceedings, the President explained that "*[w]ithin the next 12 months, it is anticipated that all trials, other than those of late-arrested accused, will be completed and the bulk of the Tribunal's work will be on appeals*." According to the President, most appeals cases will be completed by December 2014. The President nonetheless noted the various challenges the Tribunal faces in expeditiously completing its work, stressing that "*predicting the length of proceedings at the Tribunal is an art – and not a science*." The President highlighted a variety of factors adversely impacting the completion of the Tribunal's work, including the inherent complexity of international proceedings and the loss of experienced staff.

On 5 December 2012, Judge Theodor Meron addressed the UN Security Council in his dual capacity as President of both the ICTY and the Mechanism for International Criminal Tribunals (Mechanism or MICT). President Meron reported on the progress made in relation to the completion strategy of the ICTY and gave details of the launch of the

Mechanism, encouraging the Security Council to reflect on the achievements of the former and the potential of the latter. Turning first to the *completion strategy of the ICTY*, the President highlighted the excellent progress made in completing the Tribunal's work, pointing to a number of cases which are expected to be completed faster than originally forecast. This includes the appeal judgement in the case of Momčilo Perišić which is expected to be delivered in early 2013, and the Popović et al. case which is anticipated to be completed by July 2014, several months earlier than initially predicted. With regards to cases currently at the trial stage, the President informed the Security Council that the trial of Radovan Karadžić was expected to conclude by 31 December 2014, whilst the trials of Goran Hadžić and Ratko Mladić were forecast to finish by 31 December 2015 and 31 July 2016 respectively. The President highlighted the number of challenges faced by the Tribunal in completing certain cases by the dates forecast and said: "*I am well aware of the frustrations that Council members may feel when faced with shifts in forecasted completion dates, particularly when updated forecasts fall short of expectations. I share that frustration. However, I must underscore that predicting the completion dates for trial and appellate proceedings is more akin to an art than a science, and the forecasts the Tribunal provides must be understood in this context."* The President noted a number of challenges facing the Tribunal, including the complexity of the Tribunal's cases, which can surpass that found in proceedings before national courts, as well as the Tribunal's reliance on States' cooperation with requests for evidence. The President also underscored the difficulties created by the departure of experienced staff members, which can delay preparation of judgements. The President encouraged the members of the Security Council to consider any delays in the completion of the Tribunal's work in their proper context, including the Tribunal's wider achievements: *"[D]espite some delays in the completion of the Tribunal's trials and appeals, there is no doubt that the work accomplished by the Tribunal so far, and the legacy that it will leave, are already of profound significance (…) [T]he Tribunal has been instrumental in bringing about a new era of accountability and a new commitment to justice within the international community at large,"* said the President.

Protocol between the War Crimes Prosecutor's office of Serbia and the Prosecutor's Office of Bosnia and Herzegovina. On 31 January 2013, the Protocol between the War Crimes Prosecutor's office of Serbia and the Prosecutor's Office of Bosnia and Herzegovina on the exchange of evidence and information in war crimes cases was signed in Brussels. The signing of the Protocol, which aims to facilitate cooperation between the Prosecutor's offices of Serbia and Bosnia and Herzegovina in order to bring perpetrators of grave crimes to justice, represents a significant step in the combat against impunity in the former Yugoslavia. Enhanced cooperation between the Prosecutor's offices is critical for the victims of the crimes committed during the conflicts in the former Yugoslavia who seek justice and redress for their suffering. If adequately implemented, the Protocol could offer practical solutions to problems such as parallel investigations between the two countries and represent an important step towards addressing the backlog of cases in Bosnia and Herzegovina. The Office of the Prosecutor appreciates in particular the efforts provided by the European Union, which has hosted the signing of the Protocol, to achieve this result.

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

1. Judgments

Trial Chambers

The Prosecutor v. Augustin Ngirabatware. On 20 December 2012, Trial Chamber convicted Ngirabatware of Genocide, Direct and Public Incitement to Commit Genocide and Rape as a Crime Against Humanity. He was sentenced to 35 years' imprisonment. The Trial Chamber found that Ngirabatware directly and publicly incited the killing of Tutsis at the Cyanika-Gisa roadblock in February 1994. It further found that on 7 April 1994, Ngirabatware instigated and aided and abetted the attacks and killings of Tutsis in Nyamyumba commune through his words and actions in distributing weapons at two roadblocks in Nyamyumba commune. At least some of these weapons were used by the Interahamwe militia to kill Tutsis. The Trial Chamber also found Ngirabatware guilty of participating in a joint criminal enterprise, which was in existence by 7 April 1994, and whose members shared the common purpose of destroying, in whole or in part, the Tutsi ethnic group, and exterminating the Tutsi civilian population in Nyamyumba commune. The Trial Chamber found Ngirabatware guilty for committing, through this joint criminal enterprise in the extended form, the repeated rapes of a Tutsi woman. Augustin Ngirabatware was born in 1957 in Nyamyumba commune, Gisenyi préfecture, Rwanda. Ngirabatware obtained a PhD in Economic Sciences in 1986, after which he worked in various ministries in the Rwandan government. During the events of April to July 1994, Ngirabatware served as Minister of Planning in the Interim Government and was also a member of the National Committee of the MRND party, of the Préfecture Committee of the MRND party in Gisenyi, and of the technical committee of Nyamyumba commune, Gisenyi préfecture.He was arrested on 17 September 2007 in Germany, and was transferred to the Tribunal's custody on 8 October 2009. The trial commenced on 23 September 2009. The Prosecution presented 27 witnesses, seven of whom testified in rebuttal, and the Defence called 35 witnesses including the Accused himself. The trial closed on 3 July 2012, and the Trial Chamber heard closing arguments on 23, 24 and 25 July 2012.

Appeals Chamber

The Prosecutor v. Gatete. On 9 October 2012, the Appeals Chamber affirmed Gatete's convictions and granted, Judge Pocar partially dissenting and Judge Agius dissenting, the Prosecution's ground of appeal on the failure to enter a conviction for conspiracy to commit genocide. The Appeals Chamber entered, Judges Pocar and Agius dissenting, a conviction for conspiracy to commit genocide.The Appeals Chamber reduced Gatete's sentence to 40 years of imprisonment as a remedy for the violation of his right to be tried without undue delay. He is to remain in the United Nations Detention Facility in Arusha, Tanzania, pending his transfer to the country in which he will serve his sentence. On 29 March 2011,

Trial Chamber III of the Tribunal convicted Gatete pursuant to Article 6(1) of the Statute of the Tribunal of genocide and extermination as a crime against humanity in relation to the killings of Tutsis in Rwankuba sector on 7 April 1994, at Kiziguro parish on 11 April 1994, and at Mukarange parish on 12 April 1994. The Trial Chamber sentenced him to a single term of life imprisonment. Both Gatete and the Prosecution appealed.

The Prosecutor v. Mugenzi and Mugiraneza. On 4 February 2013, the Appeals Chamber dismissed, Judge Robinson dissenting in part, Mugenzi's and Mugiraneza's appeals alleging violations of their right to a fair trial. The Appeals Chamber reversed Mugenzi's and Mugiraneza's convictions for conspiracy to commit genocide and direct and public incitement to commit genocide due to errors in the Trial Chamber's assessment of circumstantial evidence. Accordingly, the Appeals Chamber entered a verdict of acquittal as to Mugenzi and Mugiraneza and ordered their immediate release from the United Nations Detention Facility in Arusha, Tanzania. Judge Liu dissented on the reversal of the convictions for conspiracy to commit genocide. On 30 September 2011, Trial Chamber II of the Tribunal convicted Mugenzi and Mugiraneza for conspiracy to commit genocide based on their roles in the removal of Jean-Baptiste Habyalimana from his post as the prefect of Butare Prefecture on 17 April 1994. The Trial Chamber also convicted Mugenzi and Mugiraneza for direct and public incitement to commit genocide based on their roles in the installation ceremony of Sylvain Nsabimana as the new prefect of Butare Prefecture on 19 April 1994. The Trial Chamber sentenced each of them to a single sentence of 30 years of imprisonment. Mugenzi and Mugiraneza appealed against their respective convictions and sentences.

2. News

President of the ICTR re-elected. In a plenary session held on 10 April 2013 at The Hague, Netherlands, Judge Vagn Joensen (Denmark) was re-elected, by acclamation, to continue his service as President of the United Nations International Criminal Tribunal for Rwanda for a second term commencing 27 May 2013. Judge Joensen was first elected in February 2012 to serve the remainder of the Presidential term vacated by Judge Khalida Rachid Khan (Pakistan) upon the latter's redeployment to the Appeals Chamber. Judge Joensen joined the Tribunal in May 2007 as *ad litem* Judge and member of Trial Chamber III. Before joining the Tribunal, Judge Joensen was a judge at the Danish High Court, Eastern Division, in Copenhagen since 1994 and served as an international judge in Kosovo for UNMIK from 2001 to 2002

V. INTERNATIONAL RESIDUAL MECHANISM FOR CRIMINAL TRIBUNALS

On 2 July 2012, the Arusha Branch of the Mechanism for International Criminal Tribunals (MICT, www.unmict.org) was launched in Arusha, Tanzania. Established by the Security

Council of the United Nations, the Mechanism is mandated to carry out a number of essential functions of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) after the completion of their respective mandates.

On 1 August 2012, the handover of the files of the three high-level fugitives - Félicien Kabuga, Protais Mpriranya and Augustin Bizimana - to the Prosecutor of the Mechanism for International Criminal Tribunals (MICT) took place in the Office of the Prosecutor of the MICT, Justice Hassan Bubacar Jallow at ICTR in Arusha Tanzania.

On 5 October 2012, in its first decision, the Appeals Chamber of the Mechanism for International Criminal Tribunals, presided over by the President of the Mechanism, Judge Theodor Meron, upheld a decision by the International Criminal Tribunal for Rwanda to transfer the case of Phénéas Munyarugarama to the Republic of Rwanda for trial proceedings. Mr. Munyarugarama, a former military commander in the Rwandan army, was charged before the ICTR with genocide, complicity in genocide, and direct and public incitement to commit genocide as well as multiple counts of crimes against humanity. He is at large.

On 5 December 2012, President Theodor Meron presented to the Security Council the first progress report on the work of the Mechanism. The President announced that the Mechanism, which commenced operation at the Arusha branch on 1 July 2012, was *"already deeply engaged in fulfilling its mandate."* The President said that the preparations were well under way for the launch of the Hague branch, which will commence operations on 1 July 2013. The President underscored how honoured he is to have been appointed President of the Mechanism: *"In overseeing the creation and operations of the Mechanism, I (...) feel a particular responsibility to demonstrate to the international community that fairness and efficiency are not mutually exclusive concepts. Making international criminal justice sustainable in the long run depends in great part upon demonstrating that it can be an efficient, effective, and affordable proposition for the international community."* The President explained that cases in which the notices of appeal are filed after 1 July 2013 will be heard by the Mechanism. This will include any appeals in the cases of Vojislav Šešelj, Radovan Karadžić, Goran Hadžić, and Ratko Mladić. The President underscored that, whilst the bulk of the Mechanism's work will involve appeals, the Mechanism will be prepared to conduct trials of the three fugitives indicted by the ICTR whose cases have not been referred to national jurisdictions. The President urged the Security Council to assist the Mechanism in this respect: *"The arrest and trial of these three fugitives is a top priority for the Mechanism."*

On 12 June 2013, President Theodor Meron presented to the Security Council the second progress report on the work of the Mechanism since the launch of the Mechanism's Arusha branch on 1 July 2012. The President provided an update on the ongoing work of the Mechanism and preparations for the launch of the Hague branch on 1 July 2013. President

Meron advised the Security Council that "all arrangements are in place to ensure a seamless transfer of functions from the ICTY to the Hague branch of the Mechanism," adding that the Mechanism would "continue to operate as smoothly as it has done since the opening of the Arusha branch last July." Turning to the Mechanism's judicial work, President Meron informed the Security Council that since he last reported in December 2012, the Mechanism had received an appeal from the ICTR trial judgement in the Augustin Ngirabatware case and that appeals from ICTY trial judgements were expected in the future, including any appeals in the cases of Vojislav Šešelj, Radovan Karadžić, Goran Hadžić, and Ratko Mladić. Noting the Mechanism's responsibility for monitoring cases referred by the ICTR to national courts in Rwanda and France, President Meron thanked local authorities for their cooperation in facilitating this aspect of the Mechanism's work. The President also expressed his gratitude to Rwandan authorities for the warm welcome he received during his first official visit to Kigali in December 2012. In light of the imminent opening of MICT's Hague branch, President Meron said: "(…) I look forward to building on existing relations with States in the former Yugoslavia to develop similarly productive and cooperative partnerships with States there."

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

1. Judgements

The Prosecutor v. Eric Koi Senessie. On 5 July 2012, former Revolutionary United Front member Eric Koi Senessie was sentenced to a two year term of imprisonment for his conviction last month on eight counts of contempt of the Special Court. Senessie was convicted on four counts of offering a bribe to a witness, and on four counts of attempting to influence a witness, to recant testimony given in the Taylor trial. Justice Teresa Doherty imposed eight two-year sentences for each of the eight counts on which Senessie was convicted. The sentences will run concurrently, meaning that he will serve a total of two years in prison.

The Prosecutor v. Santigie Borbor Kanu, Hassan Papa Bangura, Ibrahim Bazzy Kamara and Samuel Kargbo. On 25 September 2012, three senior members of Sierra Leone's former Armed Forces Revolutionary Council (AFRC), two of them already serving sentences on convictions by the Special Court, have been found guilty of contempt for tampering with a former prosecution witness. The judgement was delivered by Judge Justice Teresa Doherty from The Hague and streamed to courtrooms in Freetown and Kigali, Rwanda on a three-way VTC video link. Santigie Borbor Kanu (aka: "Five-Five") and Hassan Papa Bangura (aka: "Bomblast") were each found guilty on two counts of interfering with the administration of justice by offering a bribe to a witness, and for otherwise attempting to induce a witness to recant testimony he gave before the Special Court. Ibrahim Bazzy Kamara was convicted for attempting to induce a witness to recant

his testimony. He was found not guilty on a second count, of offering a bribe to a witness. Kamara was also convicted on a third count of knowingly violating a court order protecting the identity of a witness who had testified against him in the AFRC trial. A fourth Accused, Samuel Kargbo (aka: "Sammy Ragga") pleaded guilty at his initial appearance in July 2011 and was convicted on both counts. He subsequently testified for the prosecution. Kargbo remains free on bail on his own recognizance pending sentencing. A three-judge panel of the Appeals Chamber rejected the appeals by three former AFRC leaders convicted in September 2012 of contempt for interference with Prosecution witnesses.

The Prosecutor v. Prince Taylor. On 25 January 2012, this former Defence investigator with the Special Court, was convicted on five contempt counts for interfering with witnesses who had testified in the trial of former Liberian President Charles Taylor. Four of the counts for which he was convicted related to attempts by Taylor to induce former Prosecution witnesses, through Eric Koi Senessie, to recant testimony they had given before the Court. The fifth count related to "instructing and otherwise persuading Eric Senessie to give false information to the Independent Counsel appointed by the Registrar on the order of Trial Chamber II" at a time when he was a potential Prosecution witness. Senessie, a former RUF member who was convicted in June 2012 on eight counts of interference with the same witnesses, gave testimony against Prince Taylor at his trial. Taylor was acquitted on four counts of offering a bribe to witnesses to induce them to recant their testimony. On 8 February, the accused was sentenced to 2 years and a half in prison.

2. News

New ICTR President. On 4 June 2013, Justice George Gelaga King of Sierra Leone has been elected Presiding Judge of the Appeals Chamber, a post which makes him President of the Special Court. He succeeds Justice Shireen Avis Fisher of the United States, whose term ended on Monday. Justice Emmanuel Ayoola of Nigeria was re-elected to a fourth term as Vice President, and Justice Renate Winter of Austria was elected as Staff Appeals Judge. Justices King, Ayoola and Winter were among the first set of Judges appointed to the Special Court at its inception in 2002, and they will serve in these posts until the Court completes its mandate. Justice George Gelaga King has been President of the Sierra Leone Court of Appeal and of Court of Appeal of the Gambia. He served as Sierra Leone's Ambassador to France, Spain, Portugal and Switzerland from 1974 to 1978, and was at the same time Sierra Leone's Permanent Representative to UNESCO. Between 1978 and 1980 he served as Sierra Leone's Ambassador and Permanent Representative to the United Nations. Justice King taught law at the Sierra Leone Law School from 1990 to 2005. He is Chairman of both the Sierra Leone Law Journal and the Gambian National Council for Law Reporting, and was a member of the Sierra Leone Council of Legal Education. He is a Fellow of the Royal Society of Arts. He holds an LLB degree from London University, and was called to the Bar at Gray's Inn, London. In May 2007, he received Sierra Leone's highest honour when he was named a Grand Officer of the Republic of Sierra Leone

(GORSL). He is a "Distinguished Visiting Professor" of Kingston University in Surrey, U.K. Justice King has been a Judge of the Special Court for Sierra Leone since 2002. He previously served two terms as President; he was first elected in 2006 and re-elected in 2007.

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

1. Transfers to prison

On 6 June 2013, Kaing Guek Eav alias Duch was transferred to the Kandal Provincial Prison to serve the remainder of his prison term (life imprisonment).

2. News

New Judges. On 12 July 2012, the Royal Government of Cambodia informed the United Nations of the appointment on 20 June 2012 by the Supreme Council of the Magistracy of the Kingdom of Cambodia of Mr. Mark Harmon of the United States and Mr. Olivier Beauvallet of France as International Co-Investigating Judge and Reserve International Co-Investigating Judge, respectively.

On 26 December 2012, Judge Florence Ndepele Mwachande Mumba of Zambia was appointed as the sitting judge of the Supreme Court Chamber of the Extraordinary Chambers in the Courts of Cambodia by the Supreme Council of the Magistracy of Cambodia upon nomination by the Secretary-General of the United Nations. She replaces former judge Motoo Noguchi who resigned in July 2012. Judge Mumba has been serving as the reserve judge of the Supreme Court Chamber until this appointment. Judge Phillip Rapoza of the USA, President of the Massachusetts Appeals Court, was appointed as the reserve Judge. From 2003 to 2005, he served as an international judge and the coordinator of the Special Panels for Serious Crimes in Timor-Leste, dealing with crimes against humanity and other serious offenses that occurred prior to that country's independence. He has been active in UN efforts to develop the justice sector in both Timor-Leste and Haiti, and he has participated in programmes and trainings in Cambodia relating to the ECCC.

Accused dead. On 14 March 2013, the ECCC announced the death of the accused Ieng Sary, who died after having been hospitalized since 4 March 2013. In accordance with the ECCC Internal Rule 32 bis, the Co-Prosecutors will determine the cause of death after relevant enquiries. The Co-Prosecutors will issue a written report on their findings in due course. Ieng Sary, born on 24 October 1925, was Deputy Prime Minister for Foreign Affairs and a permanent member of the Communist Party of Kampuchea's Standing Committee during the Democratic Kampuchea regime. He was arrested on 12 November

2007 and was on trial before the ECCC on charges of genocide, crimes against humanity and grave breaches of the 1949 Geneva Conventions.

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

1. Procedural incidents.

Recognition of victims. On 4 September 2012, the Pre-Trial Judge, Daniel Fransen, has granted nine additional persons the status of vitims participating in the Ayyash et al proceedings. The nine victims will form part of the existing group of 58 victims whose status as victims participating in the proceedings Judge Fransen recognised in a decision in May 2012.

Decision of Tribunal´s legality. On 24 October 2012, the Appeals Chamber unanimously dismissed Defence challenges to the Tribunal's legality. Defence counsel for the four Accused had challenged, before the Trial Chamber, the legality of the Tribunal arguing that it violates Lebanese sovereignty, that the Tribunal has selective jurisdiction and no authority to try the Accused. On 27 July, the Trial Chamber dismissed the Defence motions noting that the Tribunal was created bySecurity Council Resolution 1757 and the Trial Chamber did not have the authority to review this Resolution. It rejected all Defence challenges. The decision was appealed by counsel for three of the four Accused. Four of the five Appeals Chamber judges agreed in their decision that they lacked the authority to review a Security Council Resolution. However, in a separate opinion, Judge David Baragwanath expressed the view that the STL, as a court of law, must exercise a limited authority to review certain aspects of Security Council resolutions. He nonetheless concluded that the Defence Counsel have failed to establish that the Security Council acted beyond its authority and joined the other judges in dismissing the appeals. Defence Counsel have argued in both Chambers that while the 14 February 2005 attack was tragic, it did not constitute a threat to international peace and security, which was the prerequisite for the Security Council's intervention to establish the STL. The Appeals Chamber "considers that the Security Council has a broad discretion as to the characterization of a particular situation as a threat to peace and security and that the Tribunal cannot judicially review the Security Council's actions," the summary of the decision reads. The judges of the Appeals Chamber also noted that once the Security Council identified the existence of a threat to peace and security under its Charter, it had discretion to determine which measures are required to maintain or restore international peace and security, in this case, the creation of a Tribunal. The Pre-Trial Judge recently set 25 March 2013 as the tentative date for the start of trial. For more information, please refer to the headnote attached in the three languages.

2. News

New Appeals Chamber´s Judge. On 14 December 2012, the United Nations Secretary General appointed Judge Ivana Hrdličková to the Appeals Chamber of the STL. Judge Hrdličková, from the Czech Republic, will replace as of mid-January Judge Kjell Erik Björnberg, who is retiringThe Special Tribunal's Appeals Chamber has two Lebanese judges and three international judges. The Chamber's Presiding Judge is Sir David Baragwanath, the Tribunal's President.

New Deputy Registrar. On 14 January 2013, Daryl Mundis was appointed as Deputy Registrar for the Special Tribunal for Lebanon. He replaces Kaoru Okuizumi, who left the Tribunal in October. Mr Mundis, from the United States, has extensive background in international criminal justice. He served as Chief of Prosecutions at the STL from 2009 until his appointment as Deputy Registrar. Prior to joining the STL, he was a Senior Prosecuting Trial Attorney at the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague, where he was the lead prosecutor in a number of cases involving crimes committed in Bosnia and Herzegovina, Croatia and Serbia. He also served in the Chambersof the ICTY. Mr Mundis holds a Ph.D. in international law and has published extensively on issues relating tointernational criminal law and procedure, international humanitarian law and international courts and tribunals. He will be working with the Registrar, Mr Herman von Hebel, to provide administrative, legal and other essential support to the Tribunal and will deputize in his absence. Mr Mundis will oversee judicial services to ensure the smooth running of court proceedings.

Amendments to the Rules of Procedure and Evidence. On 25 February 2013, at a Plenary meeting, the Judges of the STL approved some amendments to the Tribunal's Rules of Procedure and Evidence which clarify and improve the existing rules. While several amendments are minor and technical in nature, the following is a summary of the most significant changes adopted: Rule 7 – Deadlines will now be counted as calendar days and not working days; Rule 36 – This amendment assigns more powers to a single Judge of a Chamber (the Judge Rapporteur) in order to speed up proceedings; Rules 60bis and 152 – Cases of contempt and false testimony will be heard by a single Judge, with the aim of simplifying and speeding up such proceedings; Rule 89(E) The amendment allows the Pre-Trial Judge to refer any matter to the Trial Chamber that he considers should be adjudicated before the formal transmission of the case file. As a result, the Trial Chamber will be able to consider such matters before the start of trial; Rule 70 – This amendment is aimed at streamlining the disposal of cases in case of joinder. When two or more cases are joined into one, the Trial Chamber already seized of one of them may assume some of the powers of the Pre-trial judge. This will expedite proceedings in case of joinder and prevent litigation on the most appropriate forum. The amended Rules entered into force on 6 March 2013.

Fourth annual report. On 8 March 2013, the STL announced the publishing of the fourth annual report sent to the UN General Secretary. The release of the report marks the start of the second year of the Tribunal's renewed mandate. It details the intensive preparations for trial, including Defence challenges to the Tribunal's legality, the "massive task" of disclosure of evidence, and the postponement of the tentative date for trial. Over the past year, the Tribunal's judges heard and dismissed challenges to the STL's legality, and upheld the decision to hold a trial in absentia for the 14 February 2005 attack – the first international criminal court to allow such proceedings since the Nuremberg trials. In July 2012, the Pre-Trial Judge set 25 March 2013 as a tentative date for the start of trial. In January 2013, the Defence teams requested that this date be vacated, for reasons including the incomplete disclosure by the Prosecutor, the size of the Prosecution's case and technical and translation issues. These matters, which could not have been foreseen when the trial date was set, compelled the Pre-Trial Judge to postpone the start date for hearing witnesses, given the "overarching requirement of fairness of trial." The Office of the Prosecutor said it was focused on preparing for trial as well as reviewing and investigating the three cases connected to the 14 February 2005 attack that are under the Tribunal's jurisdiction. The report notes that the Office of the Prosecutor will be ready for trial later in 2013. In addition, the Prosecution will create a new team dedicated to examining whether other assassinations can be connected to the 14 February 2005 attack.

Attempt to interfere in judicial process. On 11 April 2013**,** the STL condemned in the strongest possible terms the latest attempt to interfere with the proper administration of justice by publishing in a website a list of alleged witnesses and potentially endangering the lives of Lebanese citizens. The list of persons that could be placed at risk by this irresponsible website is not, in fact, an accurate reflection of official court records. The President launched an investigation on this incident and others directly related on the intimidation on witnesses.

POLITICAL AND ECONOMIC COOPERATION

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

1. Judgements

Judgment of 16 July 2012 in Case E-9/11 EFTA Surveillance Authority v Kingdom of Norway. The Court held that by maintaining in force restrictions on the rights of persons and undertakings established in EEA States to own holdings and exercise voting rights in financial services infrastructure institutions in Norway, the Kingdom of Norway has infringed the freedom of establishment and the free movement of capital as laid down Articles 31 and 40 EEA.

Judgment of 17 August 2012 in Case E-12/11 Asker Brygge AS v EFTA Surveillance Authority. The Court upheld a decision concerning State aid in sale of land of the EFTA Surveillance Authority of 13 July 2011 declaring that the sale by the Municipality of Asker, Norway, of a waterfront property to the company Asker Brygge AS ("Asker Brygge") constituted unlawful State aid incompatible with the EEA Agreement.

Judgment of 28 September 2012 in Case E-18/11 Irish Bank Resolution Corporation Ltd and Kaupthing Bank hf. The EFTA Court gave judgment on questions referred to it by the Reykjavík District Court (Héraðsdómur Reykjavíkur) regarding the interpretation of Article 14 of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions. According to this article, national legal provisions may not deny the validity of the claim of a known EEA creditor wha has not been individually notified of the opening of winding-up proceedings in a credit institution, even if an invitation to lodge claims has been published. Courts of EFTA States against whose decision there is no judicial Remedy under national law will take due account of the fact that They are bound by the duty of loyalty when deciding on whether to make a reference to the Court.

Judgment of 3 October 2012 in Case E-15/11 Arcade Drilling AS and the Norwegian State, represented by Tax Region West. The Court decided that EEA law does not in principle preclude the charging of a tax based on the assessment of national tax authorities that a company is in avoidance of taxation consequent to an obligation to wind-up and liquidate the company according to national company law. However, immediate recovery of the tax at the time when the tax authorities make their assessment, without the company being given the possibility to defer payment of the tax, is not compatible with EEA law.

Judgment of 8 October 2012 in joined cases E-10/11 and E-11/11 Hurtigruten AS and Norway v EFTA Surveillance Authority. The EFTA Court upheld a decision by the EFTA Surveillance Authority that an agreement between the Norwegian state and Hurtigruten AS entails State aid incompatible with the functioning of the EEA Agreement. According to this judgement, EEA States have the right to ensure that services of general economic interest are able to fulfil their missions when acting within the scope of EEA law.

Judgment of 30 November 2012 in Case E-19/11 Vín Tríó ehf. v the Icelandic State. The EFTA Court gave an Advisory Opinion on questions referred by Héraðsdómur Reykjavíkur (Reykjavík District Court). The questions related to Articles 11 and 16 of the EEA Agreement and concerned whether a State monopoly on the retail sale of alcohol may reject the sale of alcoholic beverages containing stimulants such as caffeine.

Judgment of 11 December 2012 in Case E-1/12 Den norske Forleggerforening v EFTA Surveillance Authority. The EFTA Court annulled a decision by the EFTA Surveillance Authority not to open the formal investigation procedure concerning alleged State aid to the Nasjonal Digital Læringsarena ("NDLA").

Judgment of 21 December 2012 in Case E-14/11 Schenker North AB, Schenker Privpak AB and Schenker Privpak AS v EFTA Surveillance Authority. The EFTA Court ruled on an action brought by Schenker North AB, Schenker Privpak AB and Schenker Privpak AS ("DB Schenker") on partial annulment of the EFTA Surveillance Authority's Decision denying access to documents in relation to a request seeking evidence to support a damades claim in a national court following an abuse of a dominant position.

Judgment of 3 June 2013 in Case E-14/12 EFTA Surveillance Authority v Principality of Liechtenstein. The Court held that while there is no overt discrimination on the basis of nationality, the rules in question are indirectly discriminatory, as they distinguish between temporary work agencies established in Liechtenstein on the basis of the residency of the person responsible for the management of that agency. The Court found that the greater deposit required of undertakings where the person responsible resides outside of Liechtenstein places those undertakings in a less favourable position than undertakings where the person responsible is a resident of Liechtenstein. Consequently, the Court held that the rules constitute a restriction on the freedom of establishment within the meaning of Article 31 EEA.

2. Advisory Opinions

Advisory Opinion of 22 November 2012 in Case E-17/11 Aresbank SA v Landsbankinn hf., Fjármálaeftirlitið (the Financial Supervisory Authority) and the Icelandic State. The EFTA Court gave an Advisory Opinion on questions referred to it by the Supreme Court of Iceland (Hæstiréttur Íslands) regarding the interpretation of the term deposit in Article 1(1) of Directive 94/19/EC on deposit-guarantee schemes.

Advisory Opinion of 11 December 2012 in Case E-2/12 HOB-vín ehf. v The State Alcohol and Tobacco Company of Iceland (ÁTVR). The EFTA Court established that rules on labelling, established by the Icelandic alcohol monopoly, are incompatible with EEA law. A national measure cannot be considered effective under EEA law and cannot be allowed to impose burdens on individuals and economic operators due to a failure to comply with a notification obligation under directive 2000/13/EC.

Advisory Opinion of 3 Juin 2013 in Case E-11/12 Koch and Others v Swiss Life (Liechtenstein) AG. The EFTA Court gave an Advisory Opinion on questions referred to it by Fürstliche Landgericht des Fürstentums Liechtestein (Princely Court of the Principality of Liechtenstein), asking whether Directives concerning life assurance (Directives 90/619/EC
and 92/96/EC, later replaced in the EEA by 2002/83/EC from 27 April 2004) require that an assurance undertaking provides fair advice to a policy holder and about the information to be communicated to the policy holder before the contract is concluded.

POLITICAL AND ECONOMIC INTEGRATION

X. PERMANENT TRIBUNAL OF REVISION OF MERCOSUR (PTR) (WWW.TPRMERCOSUR.ORG)

*Award of 21 July 2012, n. 01/2012, exceptional proceeding of urgence dealing with the suspension of participation of Paraguay and the admission of Venezuela as member State of Mercosur***.** The Tribunal decides to include the Ushuaia Protocol under its jurisdiction in order to analyse the legality of its application. However, the Tribunal concludes the inexistence of conditions to admit the request of application of the exceptional proceeding of urgence, without the consent of member States.

INTERNATIONAL ARBITRAL TRIBUNALS

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

1. Pendant cases

Indus Waters Kishenganga Arbitration (Pakistan v. India). On 31August 2012, the Court of Arbitration concluded a two-week hearing on the merits.

2. News

New PCA Arbitration Rules. On 17 December 2012, the Administrative Council of the PCA adopted the "PCA Arbitration Rules 2012", a new set of procedural rules for the arbitration of disputes involving at least one State, State-controlled entity, or international organization. The PCA Arbitration Rules 2012 are a consolidation of four sets of PCA procedural rules from the 1990s – the Optional Rules for Arbitrating Disputes between Two States (1992), the Optional Rules for Arbitrating Disputes between Two Parties of Which Only One is a State (1993), the Optional Rules for Arbitration Between International Organizations and States (1996), and the Optional Rules for Arbitration Between International Organizations and Private Parties (1996) –, updated in light of the 2010 revisions to the UNCITRAL Arbitration Rules and the PCA's experience with its existing procedural rules and the 1976 UNCITRAL Arbitration Rules. Model clauses that parties may consider inserting in treaties, contracts, or other agreements to provide for arbitration of existing or future disputes are set forth in the annex to the new Rules. The PCA Arbitration Rules 2012 were developed by a Drafting Committee of leading practitioners of international arbitration, chaired by Professor Jan Paulsson. The other members of the Drafting Committee were Ms. Lise Bosman, Mr. Brooks W. Daly, Mr. Alvaro Galindo,

Professor Alejandro Garro, H.E. Judge Sir Christopher Greenwood, Mr. Michael Hwang, Professor Gabrielle Kaufmann Kohler, Mr. Salim Moollan, Professor Dr. Michael Pryles AM, Judge Seyed Jamal Seifi, and Mr. Jernej Sekolec.