

CHRONICLE ON INTERNATIONAL COURTS AND TRIBUNALS (JANUARY - JUNE 2012)

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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. SPECIAL COURT FOR SIERRA LEONE (SCSL). VI. EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (ECCC). VII. SPECIAL TRIBUNAL FOR THE LEBANON (STL). VIII. EFTA COURT. IX. TRIBUNAL OF JUSTICE OF THE ANDEAN COMMUNITY (TJAC). X. CENTROAMERICAN COURT OF JUSTICE (CCJ). XI. PERMANENT COURT OF ARBITRATION (CPA).

INTERNATIONAL JUDICIAL TRIBUNALS

GENERAL JURISDICTION

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

1. Judgments

Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening). In its Judgment of 3 February, which is final, without appeal and binding on the Parties, the Court, found:

- a. by twelve votes to three, that the Italian Republic had violated its obligation to respect the immunity which the Federal Republic of Germany enjoys under international law by allowing civil claims to be brought against it based on violations of international humanitarian law committed by the German Reich between 1943 and 1945;
- b. by fourteen votes to one, that the Italian Republic had violated its obligation to respect the immunity which the Federal Republic of Germany enjoys under international law by taking measures of constraint against Villa Vigoni;
- c. by fourteen votes to one, that the Italian Republic had violated its obligation to respect the immunity which the Federal Republic of Germany enjoys under international law by declaring enforceable in Italy decisions of Greek courts based on violations of international humanitarian law committed in Greece by the German Reich;
- d. by fourteen votes to one, that the Italian Republic must, by enacting appropriate legislation, or by resorting to other methods of its choosing, ensure that the decisions of its courts and

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those of other judicial authorities infringing the immunity which the Federal Republic of Germany enjoys under international law cease to have effect;
Finally, the Court rejected, unanimously, all other submissions made by the Federal Republic of Germany.

Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo) (compensation owed by the Democratic Republic of the Congo to the Republic of Guinea). On 19 June 2012, the Court delivered its Judgment in this case, which is final, without appeal and binding on the Parties, fixing, by fifteen votes to one, the amount of compensation due from the Democratic Republic of the Congo to the Republic of Guinea for the non-material injury suffered by Mr. Diallo at US\$85,000; as well as the amount of compensation due from the Democratic Republic of the Congo to the Republic of Guinea for the material injury suffered by Mr. Diallo in relation to his personal property at US\$10,000. The Court also found, by fourteen votes to two, that no compensation is due from the Democratic Republic of the Congo to the Republic of Guinea with regard to the claim concerning material injury allegedly suffered by Mr. Diallo as a result of a loss of professional remuneration during his unlawful detentions and following his unlawful expulsion; and found, unanimously, that no compensation is due from the Democratic Republic of the Congo to the Republic of Guinea with regard to the claim concerning material injury allegedly suffered by Mr. Diallo as a result of a deprivation of potential earnings. The Court decided, unanimously, that the total amount of compensation due under points 1 and 2 above shall be paid by 31 August 2012 and that, in case it has not been paid by this date, interest on the principal sum due from the Democratic Republic of the Congo to the Republic of Guinea will accrue as from 1 September 2012 at an annual rate of 6 per cent. Finally, the Court rejected, by fifteen votes to one, the claim of the Republic of Guinea concerning the costs incurred in the proceedings.

2. Advisory opinions

Advisory opinion requested by International Fund for Agricultural Development (IFAD) with regard to the Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a complaint filed against the IFAD. The Court issued its decision on 1 February 2012, finding unanimously:

- a. with regard to Question I, that the Administrative Tribunal of the International Labour Organization was competent, under Article II of its Statute, to hear the complaint introduced against the International Fund for Agricultural Development on 8 July 2008 by Ms Ana Teresa Saez García;
- b. with regard to Questions II to VIII, that these questions do not require further answers from the Court;
- c. with regard to Question IX, that the decision given by the Administrative Tribunal of the International Labour Organization in its Judgment No. 2867, ordering the payment of damages and costs to Ms Ana Teresa Sáez García due to the non-renewal of her contract, is valid.

3. Pendant cases

- *Construction of a road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*. By an Order of 23 January 2012, according to the consent of the parties, the Court fixed 19 December 2012 and 19 December 2013 as the respective time-limits for the filing of a Memorial by the Republic of Nicaragua and a Counter-Memorial by the Republic of Costa Rica.
- *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*. By an Order dated 23 January 2012, the Court authorized the submission by the Republic of Croatia of an additional pleading relating solely to the counter-claims submitted by the Republic of Serbia and fixed 30 August 2012 as the time-limit for the filing of that pleading.
- *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*. The Court held public hearings from 12 to 21 March 2012, and then began its deliberation.
- *Territorial and Maritime Dispute (Nicaragua v. Colombia)*. The Court held public hearings from 23 April to 4 May 2012, and then began its deliberation.
- *Frontier dispute (Burkina Faso v. Níger)*. The Court fixed the public hearings from 8 to 17 October 2012.
- *Maritime dispute (Burkina Faso v. Níger)*. The Court fixed the public hearings from 3 to 14 December 2012.
- *Whaling in the Antarctic (Australia v. Japan)*. On 18 May 2012, the ICJ decided that the filing of a Reply by Australia and a Rejoinder by Japan was not necessary, so the written proceedings in this case are accordingly closed.

4. News

- *Election of President and Vice-President*. On 6 February 2012, Judge Peter Tomka (Slovakia) was elected President of the ICJ and Judge Bernardo Sepúlveda-Amor (Mexico) was elected Vice-President, each for a term of three years.
- *New members*. On 12 March 2012, Ms. Julia Sebutinde (Uganda) and Mr. Giorgio Gaja (Italy) made the solemn declaration to swear-in as new Judges of the ICJ. They had been elected by the General Assembly and the Security Council of the United Nations on 13 December 2011 and 10 November 2011 respectively. On 27 April 2012, the General Assembly and the Security Council of the United Nations elected Mr. Dalveer Bhandari (India) as a new member, with immediate effect, succeeding Mr. Awn Shawkat Al-Khasawneh (Jordan), former judge and Vice-President of the Court, who had resigned the year before. Judge Dalveer Bhandari swore-in on 19 June.

INTERNATIONAL CRIMINAL LAW

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

1. Judgements

- *Lubanga case*. On 14 March, Trial Chamber I decided unanimously that Thomas Lubanga Dyilo was guilty, as a co-perpetrator, of the war crimes of conscripting and enlisting children under the age of 15 and using them to participate actively in hostilities from 1 September 2002 to 13 August 2003. It is the first verdict issued by an ICC Trial Chamber. At present, 14 other cases are before the Court, three of which are at the stage of trial.

2. New cases

- *The Prosecutor v. Sylvestre Mucadumura*. On 15 May, the Office of the Prosecutor submitted an application (amended on 13 June) for an arrest warrant against Sylvestre Mucadumura, for 5 counts of crimes against humanity (murder, inhumane acts, rape, torture and persecution) and 9 counts of war crimes (attack against a civilian population, murder, mutilation, cruel treatment, rape, torture, destruction of property, pillaging and outrage upon personal dignity). The new application follows ICC Judges' decision to dismiss a previous application, considering that this application fell short of the proper level of specificity. On 31 May, Pre-Trial Chamber II unanimously dismissed, *in limine* (without examining the merits), the Prosecutor's application for a warrant of arrest against Mr Sylvestre Mudacumura, considering that this application "fell short of the proper level of specificity" in describing the alleged crimes "for which the person's arrest is sought". The Chamber noted that the ICC Prosecutor's application did not provide "proper counts or any other kind of accompanying description of the specific facts underlying the crimes" allegedly committed in North and South Kivu Provinces (Democratic Republic of the Congo), and failed to "set out the specific references to the alleged crimes" as requested by the Rome Statute.
- *The Prosecutor v. Bosco Ntaganda*. On 13 June, the ICC issued an arrest warrant for Bosco Ntaganda, leader of the CNDP militia, another armed group actives in the Kivu provinces. The Prosecution has also sought to add new charges against him on 14 May. Both Sylvestre Mucadumura and Bosco Ntaganda lead armed and dangerous militias and their arrest can lead to stopping the crimes and bringing justice to the populations they continue to afflict.
- *The Prosecutor v. Abdel Raheem Muhammad Hussein ("Hussein")*. On 1 March, Pre-Trial Chamber I of the ICC issued a warrant of arrest against Mr Abdel Raheem Muhammad Hussein ("Hussein") for 41 counts of crimes against humanity and war

crimes allegedly committed in the context of the situation in Darfur (Sudan). Mr Hussein is currently Minister of National Defence of the Sudanese Government and former Minister of the Interior and former Sudanese President's Special Representative in Darfur.

3. News

- *New judges.* On 9 March, five new judges, elected on December 2011, sworn-in in a ceremony held at the seat of the ICC. Judges Howard Morrison (United Kingdom), Anthony T. Carmona (Trinidad and Tobago), Olga Herrera Carbuccion (Dominican Republic), Robert Fremr (Czech Republic) and Chile Eboe-Osuji (Nigeria) took the public oath declaring: "I solemnly undertake that I will perform my duties and exercise my powers as a judge of the International Criminal Court honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions and the secrecy of deliberations". Judge Miriam Defensor-Santiago (Republic of the Philippines) was unavailable due to personal circumstances.
- *Re-election of President and election of Vice-Presidents.* On 11 March, the judges of the ICC re-elected Judge Sang-Hyun Song (Republic of Korea) as President of the Court for a three-year term with immediate effect. Judge Sanji Mmasenono Monageng (Botswana) was elected First Vice-President and Judge Cuno Tarfusser (Italy) Second Vice-President.
- *New States Parties at the Rome Statute.* On 2 April, the United Nations received from the Government of the Republic of Guatemala its instrument of accession to the Rome Statute. The Rome Statute entered into force for Guatemala on 1 July 2012, bringing to 121 the total number of States Parties.
- *First ratification of crime of aggression.* On 9 May, Liechtenstein deposited the instrument of ratification of the amendments to the Rome Statute on the crime of aggression. Liechtenstein became the first State Party to ratify the amendments that were adopted in a historic consensus at the 2010 Review Conference of the Rome Statute in Kampala.
- *Agreements on enforcement of sentences.* On 13 January, the ICC and the Republic of Mali concluded an agreement on the enforcement of sentences of imprisonment. The agreement was signed by Judge Fatoumata Dembele Diarra, First Vice-President of the ICC, and Mr Soumeylou Boubeye Maiga, Minister of Foreign Affairs and International Cooperation of the Republic of Mali, in the nation's capital, Bamako. Mali is the first state in Africa to conclude such an agreement with the ICC.

- *Amendments to the Regulations of the ICC.* On 29 June, amendments to the Regulations of the Court adopted by the judges on 2 November 2011, during their eighteenth plenary session, entered into force. The amendments focus on Chapter IV of the Regulations of the Court (“Counsel issues and legal assistance”). Pursuant to Article 52 of the Rome Statute, the amendments to the Regulations of the Court will be circulated to States Parties for comments. If, within six months from circulation, there are no objections from a majority of States Parties, the amendments shall remain in force.

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

1. Judgments

The Prosecutor v. Jelena Rašić. On 7 February, Trial Chamber III sentenced Jelena Rašić to 12 months' imprisonment for contempt of the Tribunal. Rašić was given credit for the 78 days she has already spent in detention. The Chamber ruled that the remaining 8 months of the sentence would be suspended for a period of two years. Rašić was formerly a case manager on the Defence team of Milan Lukić, a Bosnian Serb who was sentenced by the Trial Chamber to life imprisonment for crimes committed in the eastern Bosnian town of Višegrad. She was sentenced following her conviction on 31 January 2012 of having knowingly and wilfully interfered with the administration of justice by procuring a false witness statement from Zuhdija Tabaković from Višegrad in exchange for €1,000 in cash. 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 the Accused 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. Milan Tupajić. On 24 February, Trial Chamber III sentenced Milan Tupajić, former chief of the crisis staff and war-time president of the municipality of Sokolac, Bosnia and Herzegovina, to 2 months' imprisonment for failing to comply with the Chamber's orders to appear as a witness in the trial of Radovan Karadžić.

The Prosecutor v. Vojislav Šešelj. On 28 June, Trial Chamber II convicted Vojislav Šešelj of contempt of the Tribunal and sentenced him, by majority, to two years imprisonment 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.

2. Pendant cases

Karadžić case. The Prosecution completed its evidence presentation in just under the allocated 300 hours.

Ratko Mladić case. On 16 May, the trial started with the Prosecution's opening statement, less than one year after his arrest.

3. Detentions

- *Radovan Stanković.* On 21 January, Radovan Stanković, a former member of Serb paramilitary forces, was arrested in Bosnia and Herzegovina. He was indicted by the ICTY for crimes against humanity and war crimes, including rape committed in Foča, Bosnia and Herzegovina, in 1992. He was transferred by the Tribunal to Bosnia and Herzegovina in September 2005 pursuant to Rule 11bis of the Rules of Procedure and Evidence of the Tribunal. He was convicted by the State Court of Bosnia and Herzegovina to a 20-year sentence but escaped from prison in Foča in May 2007.

4. News

- *Appointments regarding the International Residual Mechanism for Criminal Tribunals.* On 19 January, the United Nations Secretary-General appointed Mr. John Hocking as the Registrar of the International Residual Mechanism for Criminal Tribunals (MICT). Mr. Hocking had been serving as the Registrar of the International Criminal Tribunal for the Former Yugoslavia since May 2009, a position that he will continue to hold while performing his functions at the Residual Mechanism. The Residual Mechanism is a unique UN body designed to carry out the essential residual functions of the ICTY and ICTR once they have completed their mandates. The Mechanism will continue the jurisdiction and obligations of the Tribunals while maintaining their legacies. The Residual Mechanism has two branches, in Arusha and in The Hague, which commenced functioning on 1 July 2012 and 1 July 2013, respectively. As its first Registrar, Mr. Hocking will be responsible for the effective commencement of the functions of the Residual Mechanism. On 1 March, the UN Secretary-General appointed Judge Theodor Meron as President of the International Residual Mechanism for Criminal Tribunals for a term of four years. Judge Meron has been serving as the President of the International Criminal Tribunal for the Former Yugoslavia since November 2011, a position that he will continue to hold while performing his functions at the Residual Mechanism. On 24 April, the official swearing-in of those Judges of the ICTY who have been elected Judges of the International Residual Mechanism took place. Following the swearing in of the President, Judges Carmel Agius, Jean-Claude Antonetti, Christoph Flügge, Burton Hall, Liu Daqun, Bakone Justice Moloto, Prisca Matimba Nyambe, Alphons Orie, and Patrick Robinson were each sworn in by Registrar of the International Residual Mechanism, Mr. John Hocking. On 27 April,

four judges of the Mechanism, who were located outside of the Mechanism's two branches in The Hague and Arusha were sworn in remotely by Registrar John Hocking: Aydin Sefa Akay (Turkey), Jose Ricardo de Prada Solaesa (Spain), Ben Emmerson (UK), and Aminatta Lois Runeni N'gum (The Gambia). The same week, nine Judges who were then serving in the ICTY were sworn in during a ceremony at The Hague. Additional Judges sworn in at a ceremony held the following week in Arusha, during President Meron's and Registrar Hocking's mission to Tanzania. On 18 May, Judges Ivo Nelson de Caires Batista Rosa (Portugal) and Graciela Susana Gatti Santana (Uruguay) were sworn in remotely by the Registrar John Hocking. The two Judges are the last of the 25 Judges who will serve the International Residual Mechanism for Criminal Tribunals to be sworn in as Judges of the Mechanism. These judges were elected by the General Assembly on 20 December 2011 from a longer list submitted by the Security Council and following nominations from Member States of the United Nations.

- *Completion Strategy Reports.* On 7 June, the Tribunal's President, Judge Theodor Meron, addressed the United Nations Security Council to provide an update on the work and achievements of the Tribunal over the past six months. President Meron reported on steps taken in the implementation of the Tribunal's Completion Strategy, the transition to the International Residual Mechanism for Criminal Tribunals and the positive impact of recent reforms on the pace of the Tribunal's work. President Meron also spoke of the difficult challenges still faced by the Tribunal during the final years of its mandate, highlighting in particular the issue of staff attrition. Regarding the Tribunal's caseload, the President informed the Security Council that of the 8 cases before the Trial Chamber, 5 were expected to be completed by December 2012. The trials of Ratko Mladić and Goran Hadžić may, he explained, continue past the previously indicated completion date of December 2014. In closing, President Meron observed that, by establishing the Residual Mechanism, the Security Council has helped to guarantee that "*the closure of the two pioneering ad hoc tribunals does not open the way for impunity to reign once more*". With the Residual Mechanism, the Security Council has also helped to ensure that the rights of victims, witnesses, persons whose cases have been referred to national jurisdictions, and persons tried or convicted by the Tribunal and the ICTR will remain both respected and protected. President Meron stressed that the establishment of the Residual Mechanism "*is crucial to safeguarding the Tribunal's own invaluable legacy*" and thanked the Security Council for ensuring that "*the very best traditions of international criminal justice – which the Tribunal has helped to define for nearly two decades – live on*".

On the other hand, the Prosecutor also informed the Security Council, highlighting the progress in two of the most significant cases: Karadžić and Mladić. In Karadžić, the Prosecution completed its evidence presentation in just under the allocated 300 hours. The Mladić trial started on 16 May with the Prosecution's opening statement, less than one year after his arrest. The Prosecutor said that "*after Mladić's 16 year run from*

justice, the start of his trial was a significant day for the Tribunal and for the many victims of the alleged crimes". By October 2012, only three cases should remain in the trial evidence presentation stage and five trial judgements were expected by the end of the year. According to the Prosecutor, day-to-day cooperation provided by states of the former Yugoslavia to the OTP fully meets expectations. The Prosecutor, however, remains concerned about Serbia's lack of progress towards investigating and prosecuting individuals who assisted ICTY fugitives while at large. The Prosecutor also stated that there are serious problems in the implementation of national war crimes strategies, particularly in Bosnia and Herzegovina, where thousands of serious crimes still require follow-up. He said that unless it is made a top priority and more resources are allocated, the National War Crimes strategy in Bosnia and Herzegovina will fail. Moreover, the successful implementation of war crimes strategies requires greater regional cooperation, particularly between Serbia and Bosnia and Herzegovina. The Prosecutor concluded by stating that *"recent comments made by the newly elected President of Serbia who denied that genocide occurred in Srebrenica in July 1995 are not acceptable"* and *"contravene the legal and factual findings of the ICTY and the International Court of Justice"*. According to the Prosecutor *"such rhetoric is a backwards step, aggravates the victims' suffering, and jeopardizes the fragile process of reconciliation in the former Yugoslavia"*.

- *Rules of Procedure and Evidence of the MICT.* On 8 June, the Judges of the MICT adopted the Rules of Procedure and Evidence, to guide the work of the institution mandated with carrying out a number of essential functions of the ICTY and the ICTR after the completion of their respective mandates. The Rules of Procedure and Evidence will govern the Mechanism's trial and appellate proceedings as well as sentencing and early release practices. The Rules combine and build upon the procedures already in place at the two pioneering Tribunals that have, since the mid-1990s, been prosecuting those believed to be the most responsible for the crimes committed during the wars in the former Yugoslavia and the genocide in Rwanda. The Security Council established the MICT in order to carry out the remaining essential functions of both Tribunals after the completion of their respective mandates and to maintain the legacy of these institutions.

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

1. Judgments

Trial Chambers

The Prosecutor v. Callixte Nzabonimana. On 31 May, Trial Chamber III convicted Callixte Nzabonimana, former Rwanda Minister of Youth and Associate Movements, of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide and extermination as a crime against humanity. He was sentenced to life imprisonment.

The Prosecutor v. Ildéphonse Nizeyimana. On 19 June, Trial Chamber III sentenced Ildéphonse Nizeyimana, a former captain at the Butare military academy called the *École des Sous-Officiers*, to life imprisonment. Nizeyimana was found guilty of genocide, extermination and murder as crimes against humanity and murder as a serious violation of Article 3 common to the Geneva Conventions and Additional Protocol II.

Appeals Chamber

The Prosecutor v. Tharcisse Muvunyi. On 6 March, the ICTR ordered the early release of Tharcisse Muvunyi from the UN Detention Facility in Arusha with immediate effect. Muvunyi, former *Commander of Ecole Sous-Officiers (ESO)*, was first convicted by Trial Chamber II of the Tribunal on 12 September 2006 for multiple acts of genocide, direct and public incitement to commit genocide, and other inhumane acts and was on that date sentenced to 25 years imprisonment. On appeal, all convictions and sentence were set aside, and a re-trial was ordered on one allegation of direct and public incitement to commit genocide.

The Prosecutor v. Aloys Ntabakuze, Ildephonse Hategekimana and Gaspard Kanyarukiga. On 8 May, The Appeals Chamber reversed some convictions in the Ntabakuze case and reduced his life sentence to 35 years of imprisonment, affirmed the convictions and sentence of life in prison in the Hategekimana case and affirmed the convictions and sentence of 30 years in prison in the Kanyarukiga case.

2. Referrals to Rwanda jurisdiction

- On 16 January, the Prosecutor of ICTR, Mr. Hassan Bubacar Jallow handed-over referral and prosecution materials in the Jean Bosco Uwinkindi case to the Government of the Republic of Rwanda. The case file was handed-over to the Prosecutor General of the Republic of Rwanda, Mr. Martin Ngoga in Kigali. The handover follows a decision by the Appeals Chamber of the Tribunal on 18 December 2011 to dismiss

Uwinkindi's appeal against a decision by a Referral Chamber to refer his case to the Rwandan national court system under Rule 11 *bis*.

- On 22 February, the Referral Chamber of the ICTR transferred to the authorities of the Republic of Rwanda the case of Fulgence Kayishema, former Judicial Police Inspector of Kivumu Commune in Kibuye Prefecture. Kayishema is yet to be arrested.
- On 26 March, the Referral Chamber ordered the case of *The Prosecutor v. Charles Sikubwabo* to be referred to the authorities of the Republic of Rwanda, so that those authorities should forthwith refer the case to the High Court of Rwanda for an expeditious trial.
- On 8 May, the Referral Chamber transferred to the authorities of the Republic of Rwanda the case of Ladislav Ntaganzwa, former mayor of Nyakizu commune in Butare. Ntaganzwa remains at large.
- On 6 June, the case of Bernard Munyagishari, former President of *Interahamwe* in Gisenyi prefecture, was transferred to the authorities of the Republic of Rwanda. Munyagishari is charged with conspiracy to commit genocide, genocide, complicity in genocide, murder and rape as crimes against humanity.
- On 20 June, the Referral Chamber transferred to the authorities of the Republic of Rwanda the case of Ryandikayo, who was a businessman in Mubuga *secteur*, Gishyita *commune* during the genocide in Rwanda. Ryandikayo is believed to have been born around 1961 in Musenyi *secteur*, Gishyita *commune* and currently remains at large.
- On 25 June, the case of Aloys Ndimbati, who was the *bourgmestre* of Gisovu *commune* from 1990 until the end of July 1994, was transferred to the authorities of the Republic of Rwanda. Ndimbati is believed to have been born in the early 1950s in Gitabura *secteur*, Gisovu *commune*, Kibuye *préfecture* in the Republic of Rwanda and currently remains at large.
- On 28 June, the ICTR transferred to the authorities of the Republic of Rwanda the case of Phénéas Munyarugarama, who held the rank of Lieutenant Colonel in the *Forces Armées Rwandaises*, and was the highest ranking military officer at Gako camp, in the Bugesera region of Kigali-rural *préfecture* between early 1993 and 14 May 1994. Munyarugarama was born on 1 January 1948 in Kidaho *commune* of Ruhengeri *préfecture* in the Republic of Rwanda and currently remains at large.

3. News

- *New President and Vice-President of the ICTR.* On 13 February, Judge Vagn Joensen (Denmark) was elected President of the Tribunal and Judge Florence Rita Arrey (Cameroun) was elected Vice-President of the Tribunal. Judge Joensen replaces Judge Khalida Rachid Khan (Pakistan) who would be redeployed to the Appeals Chamber in The Hague. Judge Arrey took over the Vice-Presidency from Judge Joensen. The new President assumed his duties on 2 March 2012, and the new Vice-President on 14 February 2012
- *For the issues related to the International Residual Mechanism for Criminal Tribunals, see ICTY section above.*

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

1. Judgements

The Prosecutor v. Charles Taylor. On 26 April, Charles Ghankay Taylor, the former President of Liberia, was convicted on all counts of an 11-count indictment which alleged that he was responsible for crimes committed by rebel forces during Sierra Leone's decade-long civil war. The Special Court's Trial Chamber II found unanimously that Mr. Taylor aided and abetted RUF and AFRC rebels in the commission of war crimes and crimes against humanity in Sierra Leone. Mr. Taylor was convicted on Count 1 for acts of terrorism (a war crime), on Count 2 for murder (a crime against humanity), on Count 3 for murder (a war crime), on Count 4 for rape (a crime against humanity), on Count 5 for sexual slavery (a crime against humanity), on Count 6 for outrages upon personal dignity (a war crime), on Count 7 for cruel treatment (a war crime), on Count 8 for inhumane acts, including mutilations and amputations, (a crime against humanity), on Count 9 for the recruitment, enlistment and use of child soldiers, on Count 10 for enslavement (a crime against humanity), and on Count 11 for pillage (a war crime). On 30 May, the Chamber sentenced the former Liberian President Charles Ghankay Taylor to a term of 50 years. Charles Taylor is the first head of state to be indicted, tried and convicted by an international tribunal.

The Prosecutor v. Eric Koi Senessie. On 21 June, the former RUF member, Eric Koi Senessie, was convicted on eight of nine contempt of court charges alleging that he had attempted to induce five prosecution witnesses who testified in the Taylor trial to recant their testimony. Four of the counts alleged he had offered a bribe to a witness, and five of the counts alleged that he had attempted to influence a witness.

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

1. Judgements

The Prosecutor v. Kaing Guek Eav, "Duch". On 3 February, the Supreme Court Chamber ECCC sentenced KAING Guek Eav alias Duch to life imprisonment, the maximum sentence available, for crimes against humanity and grave breaches of the 1949 Geneva Conventions. The Chamber noted that the high number of deaths for which KAING Guek Eav is responsible (minimum 12,272 lives), along with the extended period of time over which the crimes were committed (more than three years), undoubtedly place this case among the gravest before international criminal tribunals. The Chamber also held that the fact that the Accused was not on the top of the command chain in the regime does not by itself justify a lighter sentence, and that there is no rule that dictates reserving the highest penalty for perpetrators at the top of the chain of command.

2. News

ECCC Budget. On 9 March, the budget for 2012 and 2013 was published and it amounts to US\$ 89.6 million in total, of which US\$ 45.7 million is for 2012 and US\$ 43.9 million is for 2013. The international component of the ECCC accounts for US\$ 69.6 million, of which US\$ 35.4 million is for 2012 and US\$ 34.2 million is for 2013. The national component accounts for US\$ 20.0 million, of which US\$ 10.3 million is for 2012 and US\$ 9.7 million is for 2013. All figures in the international component are inclusive of contingency. On 26 March, the Australian Government has announced a new pledge of AUD 1.61 million (approximately US\$ 1.73 million) to ECCC. AUD 1 million will be given to the international component and AUD 0.61 million will be given to the national component of the ECCC.

Resignation of international judge. On 16 May, Judge Motoo Noguchi (Japan), an international judge of the Supreme Court Chamber of the ECCC, tendered a letter of resignation to the UN Secretary-General. His resignation took effect in 60 days on 15 July 2012. After leaving the ECCC, he returned to serving the Ministry of Justice of Japan.

New International Judge. On 7 June, following the nomination by the UN Secretary General, and the approval by the Supreme Council of the Magistracy, His Majesty King Norodom Sihamoni has appointed Justice Steven J. Bwana (Tanzania) as new international reserve judge to serve in the Pre-Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC). Justice Bwana replaces Kathinka Lahuis (Netherlands). Currently serving as a Justice of Appeals in the Court of Appeal of Tanzania, Justice Bwana has more than 38 years of experience as a judge, registrar and legal professional cutting across national and international spheres. He holds degrees as Doctor of Laws and

Master of Laws from Lateran University in Rome and Master of Laws and Bachelor of Laws from University of Dar es Salaam.

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

1. Procedural incidents.

- *Definition of the crime of “criminal association”.* On 2 March, The Pre Trial Judge requested the Appeals Chamber to define the crime of "criminal association" following the Prosecution's recent request to amend the indictment. On 8 February, the Prosecution requested to amend the indictment in a confidential filing only to the Pre Trial Judge. The contents of the amended indictment remain confidential. The Prosecution is seeking to add a new count to the indictment of "criminal association", which is an offence under the Lebanese Penal Code (article 335). Under the Tribunal's Rules, the Pre Trial Judge may ask the Appeals Chamber to deal with such preliminary questions. This happened last year when the Appeals Chamber was asked to define terrorism and conspiracy, amongst other crimes. At that time, the Appeals Chamber was not called on to define the crime of "criminal association". The Pre Trial Judge will rely on the Appeals Chamber's definition in his review of the Prosecution's request to amend the indictment. He can confirm or reject the proposed amendments completely or in part.

2. News

- *Amendments to the Rules of Procedure and Evidence.* On 20 February, the Tribunal approved some amendments to the Rules of Procedure and Evidence, which clarified the existing rules especially in relation to victims, including:
 - o The Prosecution, Defence and the Victims' Participation Unit (VPU) can make submissions on requests from victims wishing to participate in the proceedings. Submissions are limited to legal issues to protect the confidentiality of victims' applications.
 - o The Pre-Trial Judge will decide on the grouping of victims wishing to participate in the proceedings. This decision cannot be appealed.
 - o It will now be easier for victims who participate in the proceedings to also appear as witnesses before the Tribunal.
 - o The Judges also decided that the Prosecution must immediately inform the Head of the Defence Office about the arrest of a suspect or an accused. This will strengthen the rights of the Defence.
- *New Prosecutor and new Judge.* The new Prosecutor of the STL, Norman Farrell, and the new Appeals Chamber Judge, Daniel Nsereko, were sworn on 12 March. Norman

Farrell (Canada) joined the Tribunal upon the completion of his mandate as the Deputy Prosecutor of the ICTY. Judge Daniel Nsereko (Uganda) had been previously a Judge at the ICC.

- *New President and new Vice-President.* On 13 March, Judge Sir David Baragwanath was re-elected unanimously as the Tribunal's President and Presiding Judge of the Appeals Chamber. The Appeals Chamber also voted unanimously to re-elect Judge Ralph Riachi of Lebanon as the Vice-President. They will now serve 18-month terms. Judge Baragwanath was first elected President after Judge Antonio Cassese stepped down in October 2011 on health grounds.

POLITICAL AND ECONOMIC COOPERATION

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

1. Judgements

Judgement of 30 March in Joined Cases E-17/10 and E-6/11 Principality of Liechtenstein and VTM Fundmanagement AG v EFTA Surveillance Authority. The Court upheld a decision of the EFTA Surveillance Authority (“ESA”) of 3 November 2010 declaring that the taxation of investment companies in Liechtenstein constituted State aid incompatible with the functioning of the EEA Agreement (“EEA”). The Court also found that ESA did not err in law when it ordered the recovery of the tax benefits from 15 March 1997 until the date in which beneficiaries last benefitted from the tax exemptions following their repeal in 2006.

Judgment of 18 April in Case E-15/10 Posten Norge AS v EFTA Surveillance Authority. The EFTA Court upheld a decision by the EFTA Surveillance Authority (“ESA”) that Posten Norge AS (“Norway Post”) had abused its dominant position in the market for business-to-consumer parcel services with over-the-counter delivery in Norway by pursuing an exclusivity strategy with preferential treatment when establishing and maintaining its Postin-Shop network. However, the Court reduced the fine imposed on Norway Post from EUR 12.89 million to EUR 11.112 million

2. Advisory Opinions

Advisory Opinion of 23 January in Case E-2/11 STX Norway Offshore AS and Others. The Court rules on the employment conditions of workers posted to another EEA State, referred by Borgarting lagmannsrett (Borgarting Court of Appeal) regarding the interpretation of Directive 96/71 concerning the posting of workers.

Advisory Opinion of 30 March in Case E-7/11 Grund, elli-og hjúkrunarheimili. The Court gave an Advisory Opinion on questions referred to it by Héraðsdómur Reykjavíkur (Reykjavík District Court) regarding the interpretation of Directive 2001/83 concerning medicinal products for human use.

Advisory Opinion of 25 April in Case E-13/11 Granville Establishment v Volker Anhalt, Melanie Anhalt and Jasmin Barbaro, née Anhalt. In this Advisory Opinion, referred by the Princely Court of Justice in Liechtenstein (Fürstliches Landgericht) regarding the interpretation of Articles 4 and 36 of the EEA Agreement, the Court concluded that Article 36 EEA precludes a provision of domestic law, which accords only nationals the right not to be sued abroad on the basis of a jurisdiction agreement, unless that jurisdiction agreement had been publicly recorded.

3. News

- *New Registrar.* On 17 February, the EFTA Court appointed Gunnar Selvik as its new Registrar to take over on 1 September 2012. Mr Selvik was Director of the Goods Division at the EFTA Secretariat in Brussels where he was responsible for negotiating, implementing and monitoring all EU legislation deemed to be relevant to the Agreement on the European Economic Area in this field.

POLITICAL AND ECONOMIC INTEGRATION

America

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

1. New cases

Case 01-DL-2012. On 2 March, Mr. Galo Augusto Suárez Valdivieso presented a labor action before the TJCA against the National Parliamentary Representation of Ecuador at the Andean Parliament and the Nationally Representative Council.

2. Interpretations

As usual, the most part of resolutions issued by the TJCA during this period –around 75– deal with its prejudicial function, especially regarding the Law of Intellectual and Industrial Property (Decisions n° 344 and 486, on trade marks, patents, utility models, etc.).

XI. CENTRAL AMERICAN COURT OF JUSTICE (CCJ) (PORTAL.CCJ.ORG.NI)

1. Judgements

Judgement of 21 June, Asociación Foro Nacional de Reciclaje (FONARE) / Fundación Nicaragüense para el Desarrollo Sostenible v. Costa Rica. The Court concludes that Costa Rica breached regional and international norms by building a roadway environmentally hazardous for a common ecosystem shared with Nicaragua.

2. Advisory Opinions

Advisory Opinion of 9 January, referred by the Central American Parliament. The Court answered up to eight questions dealing with general aspects of application of Central American Integration System (CAIS) Law as well as others dealing with the quality of member of the Central American Parliament.

3. News

Criminal Chamber for the CCJ. On 9 April, the Permanent Commission of Community Organs of the CAIS decided to study the possibilities to establish a Criminal Chamber as a new section of the CCJ. This would pave the way for Dominican Republic to be part of the CCJ.

INTERNATIONAL ARBITRAL TRIBUNALS

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

1. Pendant cases

Ecuador v. United States of America. On 29 March, the defendant presented its Statement of Defense and the Memorial on Jurisdiction on 25 April. On the other hand, the claimant's Counter-Memorial on Jurisdiction was presented on 23 May.

Croatia v. Slovenia. On 13 April, representatives of the Government of the Republic of Croatia and the Government of the Republic of Slovenia convened for a first procedural meeting at the Peace Palace in The Hague in an arbitration concerning a territorial and maritime dispute between the two States.

2. News

New PCA Secretary-General. H.E. Hugo Hans Siblesz, the former Ambassador of the Kingdom of the Netherlands to France, commenced his term as the PCA's thirteenth Secretary-General on 1 June. The Administrative Council of the PCA appointed Mr. Siblesz to a five-year term at its 184th Meeting on December 6, 2011.