CHRONICLE ON INTERNATIONAL COURTS AND TRIBUNALS
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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. INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (ITLOS); IX. BENELUX COURT OF JUSTICE (BENELUX COURT); X. TRIBUNAL OF JUSTICE OF THE ANDEAN COMMUNITY (ACCJ); XI. CENTROAMERICAN COURT OF JUSTICE (CCJ); XII. PERMANENT COURT OF ARBITRATION (CPA),

I. INTRODUCTION

During the last semester of 2010, the labour of the International Courts and Tribunals (ICT) may be considered as widely, highly positive, as shown through their increasing activities. This high-valued balance allows us to verify, once again, the versatility and efficacy of ICT in managing and settling the most heterogeneous international disputes and conflicts. However, it is also necessary to remark important and substantive involutions or, at least, stand-by or overload periods which somehow undermine the valuable mission of these international Institutions.

On the *positive side*, it must be highlighted the intense activity of the International Court of Justice, with 16 cases on the docket and delivering the advisory opinion in the Kosovo case. Regarding International Criminal Law, it must be stressed the continuous ratification of the Rome Statute, having 114 States Parties, as well as the first judgement delivered by the Extraordinary Chambers in the Cambodian Courts or the great advances to accomplish the mission of Tribunals for Yugoslavia (ICTY) and Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL), all of the very close to finish their works probably in less than two years. In addition, some ICT were recently backed by States ratifying its ruling norms or signing cooperation agreements, as happened with Seychelles, Saint Lucia and Moldova

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with regards to the ICC; Senegal and ICTR; or Philippines and the Permanent Court of Arbitration.

On the *negative side*, it s not possible to forget the alleged serious mistake committed by The Office of the Prosecutor of the International Criminal Court, which almost allowed the first accused, Thomas Lubanga, to be released, as well as the serious difficulties of political and procedural order suffered by the Special Tribunal for the Lebanon.

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

II. INTERNATIONAL JUDICIAL TRIBUNALS

GENERAL JURISDICTION

I. International Court of Justice (www.icj-cij.org)

A) Judgments

Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo). On 30 November 2010, the ICJ delivered its Judgment in the case, which is final, without appeal and binding on the Parties. The Court:

(1) finds, by eight votes to six, that the claim of the Republic of Guinea concerning the arrest and detention of Mr. Diallo in 1988-1989 is inadmissible;
(2) finds, unanimously, that, in respect of the circumstances in which Mr. Diallo was expelled from Congolese territory on 31 January 1996, the Democratic Republic of the Congo violated Article 13 of the International Covenant on Civil and Political Rights and Article 12, paragraph 4, of the African Charter on Human and Peoples' Rights;
(3) finds, unanimously, that, in respect of the circumstances in which Mr. Diallo was arrested and detained in 1995-1996 with a view to his expulsion, the Democratic Republic of the Congo violated Article 9, paragraphs 1 and 2, of the International Covenant on Civil and Political Rights and Article 6 of the African Charter on Human and Peoples' Rights;
(4) finds, by thirteen votes to one, that, by not informing Mr. Diallo without delay, upon his detention in 1995-1996, of his rights under Article 36, paragraph 1 (b), of the Vienna Convention on Consular Relations, the Democratic Republic of the Congo violated the obligations incumbent upon it under that subparagraph;
(5) rejects, by twelve votes to two, all other submissions by the Republic of Guinea relating to the circumstances in which Mr. Diallo was arrested and detained in 1995-1996 with a view to his expulsion;

(6) finds, by nine votes to five, that the Democratic Republic of the Congo has not violated Mr. Diallo's direct rights as associé in Africom-Zaire and Africontainers-Zaire;
(7) finds, unanimously, that the Democratic Republic of the Congo is under obligation to make appropriate reparation, in the form of compensation, to the Republic of Guinea for the injurious consequences of the violations of international obligations referred to in subparagraphs (2) and (3) above;
(8) decides, unanimously, that, failing agreement between the Parties on this matter within six months from the date of this Judgment, the question of compensation due to the Republic of Guinea shall be settled by the Court, and reserves for this purpose the subsequent procedure in the case.

B) Advisory opinions

*Accordance with international law of the unilateral declaration of independence in respect of Kosovo***.** On 22 July 2010, the ICJ gave its Advisory Opinion on the question of the Accordance with international law of the unilateral declaration of independence in respect of Kosovo. In this Opinion, the Court unanimously found that it had jurisdiction to give the advisory opinion requested by the General Assembly of the United Nations and, by nine votes to five, decided to comply with that request. By ten votes to four, the Court concluded that "the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law". At the end of its reasoning, the Court concludes "that the adoption of the declaration of independence of 17 February 2008 did not violate general international law, Security Council resolution 1244 (1999) or the Constitutional Framework [adopted on behalf of UNMIK by the Special Representative of the Secretary-General]", and that "[c]onsequently the adoption of that declaration did not violate any applicable rule of international law".

C) New cases

Frontier Dispute (Burkina Faso v. Niger). On 20 July 2010, Burkina Faso and Niger jointly submitted a frontier dispute between them to the Court. By a joint letter dated 12 May 2010 and filed in the Registry on 20 July 2010, the two States notified the Court of a Special Agreement signed in Niamey on 24 February 2009 which entered into force on 20 November 2009. Article 2 of the Special Agreement indicates the subject of the dispute as follows:

> "The Court is requested to:
> 1. determine the course of the boundary between the two countries in the sector from the astronomic marker of Tong-Tong (latitude 14° 25' 04" N; longitude 00° 12' 47" E) to the beginning of the Botou bend (latitude 12° 36' 18" N; longitude 01° 52' 07" E);
> 2. take cognizance of the Parties' agreement on the results of the work of the Joint Technical Commission on demarcation of the Burkina Faso-Niger boundary with regard to the following sectors:
> (a) the sector from the heights of N'Gouma to the astronomic marker of Tong-Tong;
> (b) the sector from the beginning of the Botou bend to the River Mekrou."

By an Order of 14 September 2010, the Court fixed 20 April 2011 and 20 January 2012, respectively, as the time-limits for the filing of a Memorial and a Counter-Memorial by each Party.

Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua). On November 2010, the Republic of Costa Rica instituted proceedings against the Republic of Nicaragua with regard to an alleged "incursion into, occupation of and use by Nicaragua's Army of Costa Rican territory as well as breaches of Nicaragua's obligations towards Costa Rica" under a number of international treaties and conventions. In its Application, Costa Rica claims that "[b]y sending contingents of its armed forces to Costa Rican territory and establishing military camps therein, Nicaragua is not only acting in outright breach of the established boundary regime between the two states, but also of the core founding principles of the United Nations, namely the principle of territorial integrity and the prohibition of the threat or use of force against any State in accordance with article 2 (4) of the Charter; also endorsed between the parties in Articles 1, 19 and 29 of the Charter of the Organization of American States". Costa Rica charges Nicaragua with having occupied, in two separate incidents, the territory of Costa Rica in connection with the construction of a canal across Costa Rican territory from the San Juan River to Laguna los Portillos (also known as Harbor Head Lagoon), and certain related works of dredging on the San Juan River.

Costa Rica, also on 18 November 2010, filed a Request for the indication of provisional measures, in order to "adjudge and declare that Nicaragua is in breach of its international obligations . . . as regards the incursion into and occupation of Costa Rican territory, the serious damage inflicted to its protected rainforests and wetlands, and the damage intended to the Colorado River, wetlands and protected ecosystems, as well as the dredging and canalization activities being carried out by Nicaragua on the San Juan River. In particular the Court is requested to adjudge and declare that, by its conduct, Nicaragua has breached:

(a) the territory of the Republic of Costa Rica, as agreed and delimited by the 1858 Treaty of Limits, the Cleveland Award and the first and second Alexander Awards;

(b) the fundamental principles of territorial integrity and the prohibition of use of force under the Charter of the United Nations and the Charter of the Organization of American States;

(c) the obligation imposed upon Nicaragua by Article IX of the 1858 Treaty of Limits not to use the San Juan River to carry out hostile acts;

(d) the obligation not to damage Costa Rican territory;

(e) the obligation not to artificially channel the San Juan River away from its natural watercourse without the consent of Costa Rica;

(f) the obligation not to prohibit the navigation on the San Juan River by Costa Rican nationals;

(g) the obligation not to dredge the San Juan River if this causes damage to Costa Rican territory (including the Colorado River), in accordance with the 1888 Cleveland Award;

(h) the obligations under the Ramsar Convention on Wetlands;

(i) the obligation not to aggravate and extend the dispute by adopting measures against Costa Rica, including the expansion of the invaded and occupied Costa Rican territory or by adopting any further measure or carrying out any further actions that would infringe Costa Rica's territorial integrity under international law."

Costa Rica accordingly

> "requests the Court as a matter of urgency to order the following provisional measures so as to rectify the presently ongoing breach of Costa Rica's territorial integrity and to prevent further irreparable harm to Costa Rica's territory, pending its determination of this case on the merits:
>
> (1) the immediate and unconditional withdrawal of all Nicaraguan troops from the unlawfully invaded and occupied Costa Rican territories;
>
> (2) the immediate cessation of the construction of a canal across Costa Rican territory;
>
> (3) the immediate cessation of the felling of trees, removal of vegetation and soil from Costa Rican territory, including its wetlands and forests;
>
> (4) the immediate cessation of the dumping of sediment in Costa Rican territory;
>
> (5) the suspension of Nicaragua's ongoing dredging programme, aimed at the occupation, flooding and damage of Costa Rican territory, as well as at the serious damage to and impairment of the navigation of the Colorado River, giving full effect to the Cleveland Award and pending the determination of the merits of this dispute;
>
> (6) that Nicaragua shall refrain from any other action which might prejudice the rights of Costa Rica, or which may aggravate or extend the dispute before the Court".

On 7 December 2010, the Court decided to hold public hearings in the proceedings Tuesday 11 to Thursday 13 January 2011, at the Peace Palace in The Hague.

D) Pendant cases

Aerial Herbicide Spraying (Ecuador v. Colombia). On 2 July 2010, the ICJ directed the Republic of Ecuador to submit a Reply and the Republic of Colombia to submit a Rejoinder. By an Order dated 25 June 2010, the Court fixed 31 January 2011 and 1 December 2011 as the respective time-limits for the filing of these written pleadings.

Jurisdictional Immunities of the State (Germany v. Italy). The ICJ made an Order on 6 July 2010 on a counter-claim submitted by Italy in its Counter-Memorial. By that Order, the Court, by thirteen votes to one, "[f]inds that the counter-claim presented by Italy . . . is inadmissible as such and does not form part of the current proceedings" and, unanimously, authorizes Germany to submit a Reply and Italy to submit a Rejoinder and fixes 14 October 2010 and 14 January 2011, respectively, as the time-limits for the filing of those pleadings.

With respect to its counter-claim, and in accordance with Article 80 of the Rules of the Court, Italy had asked "the Court to adjudge and declare that, considering the existence under international law of an obligation of reparation owed to the victims of war crimes and crimes against humanity perpetrated by the III°Reich:

> 1. Germany has violated this obligation with regard to Italian victims of such crimes by denying them effective reparation.
> 2. Germany's international responsibility is engaged for this conduct.
> 3. Germany must cease its wrongful conduct and offer appropriate and effective reparation to these victims, by means of its own choosing, as well as through the conclusion of agreements with Italy".

In particular, the ICJ finds "that the dispute that Italy intends to bring before the Court by way of its counter-claim relates to facts and situations existing prior to the entry into force of the European Convention as between the Parties, namely, the legal régime established in the aftermath of the Second World War. That dispute accordingly falls outside the temporal scope of the Convention; the counter-claim therefore does not come within the Court's jurisdiction as required by Article 80, paragraph 1, of the Rules of Court. Having found thus, the Court observes that it need not address the question whether the counter-claim is directly connected with the subject-matter of the claims presented by Germany".

Whaling in the Antarctic (Australia v. Japan). By an Order of 13 July 2010, the Court fixed 9 May 2011 as the time-limit for the filing of a Memorial by Australia and 9 March 2012 as the time-limit for the filing of a Counter-Memorial by Japan.

Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium v. Switzerland). By Order of 10 August 2010, the President of the ICJ, at the Belgian Government's request and after having ascertained the views of the Government of the Swiss Confederation, extended the time–limits for filing the Kingdom of Belgium's Memorial and the Swiss Confederation's Counter-Memorial to 23 November 2010 and 24 October 2011, respectively.

Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation). The public hearings on the preliminary objections raised by the Russian Federation in the case concerning concluded on 17 September. The Court then began its deliberation.

Territorial and Maritime Dispute (Nicaragua v. Colombia). The Court began its deliberation after that the public hearings on whether to grant Costa Rica's application for permission to intervene in the case would have concluded on 15 October 2010.

E) Case removed

Certain Criminal Proceedings in France (Republic of the Congo v. France). By an Order dated 16 November, the Court removed this case from its General List, at the request of the Republic of the Congo. By letter dated 5 November 2010 and received in the Registry the same day by facsimile, the Agent of the Republic of the Congo, referring to Article 89 of the Rules of Court, informed the Court that his Government "withdraws its Application instituting proceedings" and requested the Court "to make an order officially recording the discontinuance of the proceedings and directing the removal of the case from the list". By letter dated 8 November 2010 and received in the Registry the same day by facsimile, the Agent of the French Republic informed the Court that her Government "has no objection to the discontinuance of the proceedings by the Republic of the Congo".

F) News

New Judge elected and swearing of new members. On 10 September 2010, the General Assembly and the Security Council of the United Nations elected Ms Joan E. Donoghue as a Member of the ICJ, with immediate effect. Of American nationality, Ms Joan E. Donoghue succeeds Mr. Thomas Buergenthal, former judge of the Court, who resigned as of 6 September 2010. Pursuant to Article 15 of the Statute of the Court, Ms Donoghue will hold office for the remainder of Mr. Buergenthal's term, which will expire on 5 February 2015. On 13 September, the two Members of the ICJ elected this year, Ms Xue Hanqin, of Chinese nationality, and Ms Joan E. Donoghue, were officially sworn in at a public sitting at the Peace Palace in The Hague.

President of the ICJ before the United Nations General Assembly. On 28 October 2010, the President H.E. Judge Hisashi Owada, stated in an address to the United Nations General Assembly on the occasion of the presentation of the Court's Report for the period from 1 August 2009 to 31 July 2010.During his address, as is traditional, President Owada gave an overview of the judicial activities of the Court, which, during the period under review, had some 16 cases on its List involving approximately 30 States from all regions of the world, and the subject-matter has been wide-ranging, extending from classical issues such as diplomatic protection and sovereign immunity to issues of contemporary relevance such as international environmental law.

INTERNATIONAL CRIMINAL LAW

II. International Criminal Court (ICC) (www.icc-cpi.int)

A) New cases

The Prosecutor v. Callixte Mbarushimana. In accordance with the warrant of arrest issued under seals by the ICC on 28 September, 2010, the French authorities arrested Mr Callixte Mbarushimana, suspected of war crimes and crimes against humanity allegedly committed in the Kivus, in the Democratic Republic of the Congo (DRC). Callixte Mbarushimana is the first senior leader arrested by the ICC for the massive crimes committed in the Kivu provinces of the DRC. He is charged with 11 counts of crimes against humanity and war crimes including killings, rape, persecution based on gender and extensive destruction of property committed by the *Forces Démocratiques pour la Libération du Rwanda* (FDLR) during most of 2009. FDLR, a group calling itself a "liberation force" is the most recent incarnation of Rwandan rebel groups established by former *génocidaires* who fled to DRC after the 1994 Rwandan genocide. From the DRC, they regrouped, organized and launched attacks on Rwanda, with the goal of removing its new government through violence. Their activities contributed to triggering the two Congo wars, 1996-2002, which resulted in an estimated 4 million victims, the largest number of civilian casualties since the Second World War. Since then, the FDLR has continued to commit horrific crimes against the civilian population.

Post-election violence in Kenya. On 15 December 2010, the Prosecutor Luis Moreno-Ocampo requested the ICC to issue summonses to appear against six Kenyan citizens to face justice for massive crimes committed during the post-election violence (PEV) in Kenya. The Prosecutor has concluded there are reasonable grounds to believe crimes against humanity were committed, in the first Prosecution case, by:

1. William Samoei Ruto - currently: Minister of Higher Education, Science and Technology (suspended), MP for Eldoret North and during the PEV, MP for Eldoret North. The Prosecution considers that he was one of the principal planners and organizers of crimes against PNU supporters;

2. Henry Kiprono Kosgey - currently: Minister of Industrialization, MP for Tinderet Constituency, ODM Chairman and during the PEV: MP for Tinderet. The Prosecution considers that he was one of the principal planners and organizers of crimes against PNU supporters; and

3. Joshua Arap Sang - currently Head of Operations, KASS FM and during the PEV: Radio broadcaster. The Prosecution considers that he was one of the principal planners and organizers of crimes against PNU supporters.

And in the second Prosecution case, by:

4. Francis Kirimi Muthaura - during the PEV and to date: Head of the Public Service and Secretary to the Cabinet and Chairman of the National Security Advisory Committee. The Prosecution considers that he authorized the Police to use excessive force against ODM supporters and to facilitate attacks against ODM supporters.

5. Uhuru Muigai Kenyatta - currently: Deputy Prime Minister and Minister of Finance. The Prosecution considers that during the PEV he helped to mobilize the Mungiki criminal organization to attack ODM supporters; and

6. Mohamed Hussein Ali - currently: Chief Executive of the Postal Corporation of Kenya and during the PEV he was Commissioner of the Kenya Police. The Prosecution considers that during the PEV he authorized the use of excessive force against ODM supporters and facilitated attacks against ODM supporters.

"The post election period of 2007-2008 was one of the most violent periods of the nation's history," said the Prosecutor. The post election attacks left more than 1.100 people dead, 3.500 injured and up to 600.000 forcibly displaced. During 60 days of violence, there were hundreds of rapes, possibly more, and over 100.000 properties were destroyed in six of Kenya's eight provinces.

B) Pendant cases

The Prosecutor v. the Sudanese President, Omar Hassan Ahmad AL BASHIR (Darfur). On 12 July 2010, Pre-Trial Chamber I issued a second warrant of arrest against the President of Sudan, Omar Hassan Ahmad Al Bashir, considering that there are reasonable grounds to believe him responsible for three counts of genocide committed against the Fur, Masalit and Zaghawa ethnic groups, that include: genocide by killing, genocide by causing serious bodily or mental harm and genocide by deliberately inflicting on each target group conditions of life calculated to bring about the group's physical destruction. This second arrest warrant does not replace or revoke in any respect the first warrant of arrest issued against Mr Al Bashir on 4 March, 2009, which shall thus remain in effect. In the previous arrest warrant, the Chamber considered that there are reasonable grounds to believe that Mr Al Bashir is criminally responsible for five counts of crimes against humanity (murder, extermination, forcible transfer, torture and rape) and two counts for war crimes (intentionally directing attacks against a civilian population as such or against individual civilians not taking direct part in hostilities, and pillaging).

On 25 October, Pre-Trial Chamber I requested the Republic of Kenya to inform the Chamber, no later than 29 October, about any problem which would impede or prevent the arrest and surrender of Omar Al Bashir in the event that he visits the country on 30 October, 2010. The Chamber, being seized on a notification of the Prosecutor informing the

Judges of the possibility that Omar Al Bashir might travel to Kenya for an Inter-governmental Authority for Development (IGAD) summit on 30 October, renewed its request to the Republic of Kenya to take any necessary measure to ensure that the President of Sudan, Omar Al Bashir, in the event that he travels to Kenya, be arrested and surrendered to the Court in accordance with its obligations as a State Party to the Rome Statute since 1 June, 2005.

On 1 December, 2010, the same Chamber requested the Central African Republic to take all necessary measures to arrest Omar Al Bashir and transfer him to the Court, in the event and at the moment that he arrives in the country's territory. Reacting to information of a possible visit of the suspect to the Central African Republic on 1 December, the Chamber noted that, as a State Party to the Rome Statute since the 3 October, 2001, the Central African Republic has the obligation to execute the warrants of arrest of Mr Al Bashir and requested the Central African Republic to inform the Chamber immediately about any problem which would impede or prevent the arrest and surrender of Mr Al Bashir in the event that he visits the country

The Prosecutor v. Thomas Lubanga Dyilo. On 15 July 2010, and following its decision dated 8 July, 2010, imposing an unconditional stay on the proceedings, Trial Chamber I ordered the release of the accused. According to the judges, an accused cannot be held in preventative custody on a speculative basis, namely that at some stage in the future the proceedings may be resurrected. However this order will not be implemented with immediate effect. "This order shall not be enforced until the five day time limit for an appeal has expired", stated presiding Judge Adrian Fulford in a hearing today. "If an appeal is filed within the five day time limit against this order granting release, and if a request is made to suspend its effect, the accused shall not leave detention until the Appeals Chamber has resolved whether this order granting release is to be suspended", Judge Fulford continued. The Chamber also noted that an order releasing the accused shall only be put into effect after arrangements have been made for his transfer to a State that is obliged to receive him.

On 23 July 2010, the Appeals Chamber granted the suspensive effect to the Prosecution's appeal against Trial Chamber I oral decision to release the accused. Therefore the accused will remain under custody of the ICC pending the final decision on the appeal. Finally, on 8 October, 2010, the Appeals Chamber reversed Trial Chamber I's decisions to stay proceedings and to release the accused. In accordance with this decision, Mr Lubanga Dyilo will remain in the custody of the Court during the trial proceedings, which can now be resumed.

The Prosecutor v. Jean-Pierre Bemba Gombo. On 7 July, 2010, Trial Chamber III vacated the commencement date of the trial, scheduled on 14 July, considering that it is in the interests of justice for the challenge to admissibility of the case raised by the Defence to be resolved by the Appeals Chamber prior to the commencement of the trial. On 24 June,

2010, Trial Chamber III had dismissed the admissibility and abuse of process challenges, raised by the Defence. The latter filed an appeal against this decision on 28 June, followed by a request for suspensive effect of the appeal on 5 July, 2010. In its order, Trial Chamber III explained that it would be inappropriate to commence the trial when there is an outstanding issue for determination by the Appeals Chamber as to whether the proceedings should be suspended and pending the outcome of the substantive appeal. Finally, the trial commenced on 22 November.

C) New investigations

Republic of Korea. On 6 December 2010, the Office of the Prosecutor informed that had received communications alleging that North Korean forces committed war crimes in the territory of the Republic of Korea. The Prosecutor of the ICC, Luis Moreno-Ocampo, confirmed that the Office has opened a preliminary examination to evaluate if some incidents constitute war crimes under the jurisdiction of the Court. They are:

a. the shelling of Yeonpyeong Island on the 23 November 2010 which resulted in the killing of South Korean marines and civilians and the injury of many others; and
b. the sinking of a South Korean warship, the Cheonan, hit by a torpedo allegedly fired from a North Korean submarine on 26 March 2010, which resulted in the death of 46 persons.

The Republic of Korea has been a State Party to the Rome Statute since 13 November 2002. As such, the ICC has jurisdiction over war crimes, crimes against humanity or genocide possibly committed on the territory of the Republic of Korea or by its nationals since 1st February 2003, date on which the Statute entered into force in the Republic of Korea.

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

D) News

Ratifications of the Rome Statute. On 10 August, 2010, the Republic of Seychelles ratified the Rome Statute of the International Criminal Court. The Statute entered into force for the Seychelles on 1 November, 2010, bringing the total number of States Parties to the Rome Statute to 112. On 18 August 2010, Saint Lucia deposited its instrument of ratification with the United Nations Secretary General. The Statute entered into force for Saint Lucia on 1 November, 2010, bringing the total number of States Parties to the Rome Statute to 113. On 12 October 2010, the Republic of Moldova ratified the Rome Statute, entering info force on 1 January, 2011, bringing the total number of States Parties to the Rome Statute to 114.

Ninth Session of the Assembly of States Parties. On 10 December 2010, the Assembly of States Parties to the Rome Statute concluded its ninth session and adopted resolutions, *inter alia*, on the programme budget for 2011 (totaling €103,607,900 and a staffing level of 766), permanent premises, governance, the Independent Oversight Mechanism and on Strengthening the International Criminal Court and the Assembly of States Parties. The Assembly also elected Ambassador Simona Mirela Miculescu, Permanent Representative of Romania to the United Nations, as Vice-President of the Assembly and Coordinator of the New York Working Group to complete the term of the former Vice-President. The election of the President of the Assembly for the period of the tenth to the twelfth sessions was deferred until the beginning of the tenth session.

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

A) Judgments

Haradinaj, Balaj, and Brahimaj Appeal Judgement. On 21 July, the Appeals Chamber partially quashed the acquittals of Ramush Haradinaj, a former commander of the Kosovo Liberation Army (KLA) in the Dukagjin area of Kosovo; Idriz Balaj, a former member of the KLA and commander of a special unit known as the Black Eagles, and Lahi Brahimaj, who served as deputy commander of the KLA Dukagjin Operative Staff. The Appeals Chamber ordered a partial re-trial of the case. The indictment alleged that the KLA persecuted and abducted civilians who were perceived to be collaborating with Serbian forces in the Dukagjin area in 1998 and that Mr. Haradinaj, Mr. Balaj, and Mr. Brahimaj were responsible for crimes through a joint criminal enterprise, the common purpose of which was to consolidate total KLA control of the Dukagjin area through the unlawful removal and mistreatment of these civilians. On 3 April 2008, the Trial Chamber found that there was insufficient evidence to establish the existence of a joint criminal enterprise in relation to the commission of crimes against humanity and violations of the laws or customs of war and acquitted the three accused of any criminal liability through such an enterprise. Mr. Haradinaj and Mr. Balaj were also acquitted of all alternative charges in the indictment. Mr. Brahimaj was found guilty of one count of torture as a violation of the laws or customs of war and another count of torture and cruel treatment as violations of the laws or customs of war and sentenced to six years of imprisonment.

Šljivančanin Appeal Judgement. On 8 December, the Appeals Chamber of the ICTY vacated the conviction of Veselin Šljivančanin, a former senior officer in the Yugoslav Peoples' Army (JNA), for aiding and abetting the murder of 194 prisoners of war after the fall of the Croatian town of Vukovar in November 1991 and reduced his sentence from 17 to 10 years' imprisonment. In issuing the first review judgement of the ICTY, the Appeals Chamber found that the defence proved a new fact which required revision of its earlier

finding that Šljivančanin was guilty of aiding and abetting murder as a violation of the laws or customs of war. The case concerns events accompanying the fall of the eastern Croatian town of Vukovar on 20 and 21 November 1991, and the subsequent murder and torture of over 190 Croat individuals who were removed from the town's hospital and taken to an Ovčara pig farm.

B) Pendant cases

Karadžić case. On 3 November, Trial Chamber III ordered the suspension of proceedings in the trial of Radovan Karadžić for a period of one month to enable him to review material recently disclosed to him by the Prosecution, around 14,000 pages of material containing potentially exculpatory information, disclosed to him by the Prosecution at the end of October 2010. Radovan Karadžić, former President of Republika Srpska, head of the Serb Democratic Party and Supreme Commander of the Bosnian Serb Army, is accused of crimes committed against Bosnian Muslim, Bosnian Croat and other non-Serb civilians in Bosnia and Herzegovina during the 1992-1995 war. His trial began on 26 October 2009.

C) News

ICTY President´s address before the UN General Assembly and Security Council. On 8 October and 5 December 2010, respectively, President Patrick Robinson presented the Tribunal's seventeenth annual report to the UN General Assembly and to the UN Security Council. In his address, the President first spoke of the Tribunal's achievement this past year in conducting proceedings in ten trials concurrently by having Judges and staff simultaneously work on more than one case. According to the latest estimates, all trials should conclude in 2012, with the exception of the *Radovan Karadžić* trial, which should be completed towards the end of 2013. The President indicated that all appeals are still scheduled to be completed by the end of 2014. He however warned that unavoidable delays in the *Karadžić* case mean that this date will have to be re-assessed at an appropriate time.

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

A) Judgments

The Prosecutor v. Dominique Ntawukulilyayo. On 3 August 2010, Trial Chamber III convicted Dominique Ntawukulilyayo *sub-prefect* of Gisagara *sub-préfecture* in Butare, of genocide and sentenced him to 25 years of imprisonment. Judge Aydin Sefa Akay dissented. The Chamber unanimously acquitted Ntawukulilyayo of complicity in genocide and direct and public incitement to commit genocide. The Chamber found that between 20 and 23 April 1994, hundreds to thousands of Tutsis and their families fled attacks in their

localities and sought refuge at Gisagara market. The majority concluded that on 23 April 1994, Ntawukulilyayo promised the Tutsi refugees gathered at the market that they would be fed and protected at nearby Kabuye hill, prompting them to go there. However, later that day, Ntawukulilyayo transported soldiers to Kabuye hill, who joined other assailants in an extensive attack, leaving possibly thousands of Tutsis dead. Judge Aydin Sefa Akay dissented with regard to these findings.

The Prosecutor v. Emmanuel Rukundo and The Prosecutor vs Callixte Kalimanzira. On 20 October 2010, the Appeals Chamber delivered the judgements in both cases. The Chamber affirmed the conviction of Rukundo, a former Military Chaplain, for genocide and for murder and extermination as crimes against humanity in relation to the events related to Saint Joseph's College and for the killing of Tutsi refugees abducted from the Saint Léon Minor Seminary. But it did so on the basis of his responsibility for aiding and abetting these crimes rather than committing them as the Trial Chamber III had found on 27 February 2009. In addition, the Appeals Chamber, Judge Pocar dissenting, reversed Rukundo's conviction for genocide by causing serious mental harm to a Tutsi woman when he sexually assaulted her. The Appeals Chamber then reduced Rukundo's sentence to 23 years of imprisonment from the 25 years he had previously been sentenced to. The Prosecution appeal was dismissed in its entirety.

The Prosecutor v. Kanyarukiga. On 1 November 2010, Kanyarukiga, a former businessman in Rwanda during the 1994 genocide, was convicted and sentenced to 30 years in prison after he was found guilty of genocide and extermination as a crime against humanity. The accused however was acquitted on the alternative charge of complicity in genocide. Having found Kanyarukiga guilty of genocide, the Chamber therefore dismissed the count charging him, in the alternative with complicity in genocide.

The Prosecutor v. Ildephonse Hategekimana. On 6 December 2010, Trial Chamber II convicted Ildephonse Hategekimana, former Commander of the Ngoma Camp for crimes of genocide and crimes against humanity and sentenced him to life imprisonment. Hategekimana, who was a Lieutenant in Rwanda Armed Forces, was found guilty on three counts of genocide for killing of Tutsi at Ngoma Parish and at Maison Généralice as well as crimes against humanity for murdering several others and raping one Nura Sezirahiga. The accused was acquitted of one count of complicity in genocide.

B) Pendant cases

The Prosecutor v. Gregoire Ndahimana. On 6 September 2010, the Trial of Gregoire Ndahimana, a former bourgmestre of Kivumu Commune, Kibuye Prefecture during the genocide, began before Trial Chamber III. Ndahimana is facing three counts of Genocide or Complicity in Genocide and crimes against humanity for extermination. In its opening statement the Prosecution told the Chamber that it will introduce evidence to prove that Ndahimana is liable as a principal offender in planning, instigating, ordering, aiding and

abetting the killings that took place in Nyange parish between 6 and 20 April 1994. The Prosecutor also stated that he will prove the superior responsibility of Ndahimana in the killings in Nyange church.

The Prosecutor v. Jean-Baptiste Gatete. On 8 November 2010 the Prosecution and the Defence presented their closing arguments in the trial of Jean-Baptiste Gatete, former Mayor of Murambi Commune in Byumba prefecture and later Director in the Women and Family Affairs Ministry. The accused is charged with six counts including Genocide, or, in the alternative, complicity in genocide; conspiracy to commit genocide; and the crimes against humanity of extermination, murder and rape.

C) Referrals to Rwanda jurisdiction

On 4 November 2010, the Prosecutor, Justice Hassan B. Jallow, filed three new applications for the referral of the cases of three accused persons to Rwanda for trial under *Rule 11 bis*. The cases are of detainee, Jean-Bosco Uwinkindi, a former Pastor in Charge of Pentecostal Church in Kanzanze commune and the fugitives Fulgence Kayishema, former Inspector Police in Kivumo commune and Charles Sikubwabo, former Bourgmestre of Gishyita, Kibuye Prefecture.

This is the second time the Prosecutor files applications for the referral of cases to Rwanda for trial. Late in 2007, he filed applications for the referral of the cases of 4 detainees and one fugitive. All applications failed because the Trial Chambers were of the view that the accused would not receive fair trials in Rwanda as a result of some of the laws in existence in the country at that time.

D) New cases

Jean-Bosco Uwinkindi, former Pastor in charge of the Pentecostal Church at Nyamata, Kenzenze Commune, Kigali Rural prefecture who is facing charges before the Tribunal was on 2 July 2010 transferred to the UN Detention Facility in Arusha. Uwinkindi was arrested on 30 June 2010 in Kampala, Uganda. Uwinkindi is charged with three counts of genocide, conspiracy to commit genocide and extermination as a crime against humanity. The accused is alleged to have led a group of killers to exterminate Tutsi in Kanzenze commune and at his Kayenzi church.

E) News

Accused deaths. On 1 July 2010, Joseph Nzirorera, an accused in the ongoing trial of former leaders of the *Mouvement Républicain pour la Démocratie et le Développement* (MRND) passed away at the age of 59 in Arusha, following sudden complications of a long illness. Nzirorera was former President of the National Assembly and Secretary-General of the MRND. He was jointly tried with Edouard Karemera, former Minister of Interior and Vice-President of the MRND and Mathieu Ngirumpatse former

DirectorGeneral of the Ministry of Foreign Affairs in the *Karemera et al.* case. The three were jointly charged with seven counts of conspiracy to commit genocide, direct and public incitement to commit genocide, genocide, complicity in genocide (as an alternative to genocide), crimes against humanity (rape, extermination) and serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II.

On 9 July, he pleaded not guilty during his initial appearance before Judge Dennis Byron, the President of the Tribunal. Uwinkindi is charged with three counts of genocide, conspiracy to commit genocide and extermination as a crime against humanity. The Accused is alleged to have led a group of killers to exterminate Tutsi in Kanzenze commune and at his Kayenzi church. The Accused is said to have stated that the Tutsi were 'inyenzi' (cockroaches) who occupied his country and Hutu must resist them. In particular, the accused is charged with using his church as a sanctuary for genocidaires and a place for slaughtering Tutsis in 1994.

On 11 October 2010, Georges Anderson Nderubumwe Rutaganda, a former member of the national and *prefectoral* committees of the *Mouvement Républicain National pour le Développement et la Démocratie* (MRND) who was serving as the second Vice President of the National Committee of the *Interahamwe*, the youth militia of the (MRND), passed away in Benin, at the age of 52, following sudden complications of a long illness. Rutaganda was also a shareholder of *Radio Télévision Libre des Mille Collines* (RTLM). Georges Rutaganda was sentenced to imprisonment for life following his conviction on one count of Genocide and two counts of Crimes against Humanity by the Tribunal. Trial Chamber I unanimously found that Rutaganda incurred individual criminal responsibility in particular for having ordered, incited and carried out murders and for causing serious bodily or mental harm to members of the Tutsi ethnic group during the genocide in Rwanda in 1994.

Agreement on enforcement of sentences. On 22 November 2010, the Republic of Senegal and the United Nations signed in Dakar an agreement on the enforcement of sentences imposed by ICTR. With the agreement, Senegal becomes the eighth country approved to receive convicts under the UN Tribunal's enforcement of sentences provisions. Mali, Benin, Swaziland, France, Italy, Sweden and Rwanda have already signed agreements on the enforcement of sentences.

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

A) Pendant cases

Charles Taylor case. On 12 November 2010, Counsel for Charles Taylor formally concluded their case today, after calling twenty-one witnesses in defence of the former

Liberian president, including Mr. Taylor himself. The Defence opened their case on 13 July 2009. The Trial Chamber has scheduled closing oral arguments for 8, 9 and 11 February 2011, after which the Judges will retire to deliberate. Mr. Taylor faces an 11-count indictment for war crimes and crimes against humanity. A trial judgment is expected mid 2011

B) News

Deputy Prosecutor to step down. On 28 September 2010, Deputy Prosecutor Mr. Kamara left the Court to take up his new post as head of Sierra Leone's Anti-Corruption Commission. His nomination had been announced in July by H.E. President Ernest Bai Koroma, and was approved by Parliament earlier this month. Mr. Kamara joined the Court in January of 2004 and was appointed Deputy Prosecutor in August 2008, the first Sierra Leonean to occupy the post. He also served as Acting Prosecutor. The post of Deputy Prosecutor is still vacant.

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

A) Judgements

The first judgement of the ECCC. On 26 July, the Trial Chamber found KAING Guek Eav *alias* Duch guilty of crimes against humanity and grave breaches of the Geneva Conventions of 1949 and sentenced him to 35 years of imprisonment. KAING Guek Eav, the first person to stand trial before the ECCC, served as Deputy and then Chairman of S-21, a security centre tasked with interrogating and executing persons perceived as enemies of Democratic Kampuchea by the Communist Party of Kampuchea. S-21 was operational between 1975 and 1979. The Chamber found that every individual detained within S-21 was destined for execution in accordance with the Communist Party of Kampuchea policy to "smash" all enemies. In addition to mass executions, many detainees died as a result of torture and their conditions of detention. Although finding a minimum of 12,272 individuals to have been detained and executed at S-21 on the basis of prisoner lists, the Chamber indicated that the actual number of detainees is likely to have been considerably greater.

B) News

ECCC Plenary Session. On 17 September 2010, the ECCC's 8th Plenary Session concluded having adopted the remainder of the amendments to the Internal Rules necessary to conclude the consolidation and streamlining of the Civil Party system commenced by previous plenaries. The high number of Civil Party applicants in Case 002, combined with

the complexity, size and other unique features of ECCC proceedings, made it necessary to adapt the Civil Party model of victim participation in ECCC proceedings in order to balance the rights of all parties and to safeguard the ability of the ECCC to reach a verdict in any future trials. Most amendments necessary to give effect to this revised concept had been adopted during previous Plenary Sessions. In addition to the harmonization or fine-tuning of numerous existing Rules, this session adopted a number of other consequential amendments that could not be considered at the last Plenary Session due to time constraints. The 8th Plenary Session also adopted or formalized measures designed to promote more expeditious trial proceedings. In particular, it streamlined existing Rules concerning the management of documentary and other evidence at trial. Such measures were considered necessary in advance of any trial in Case 002, which is expected to be far more complex and voluminous than trial proceedings in the ECCC's first case.

New Judge. On 1 December 2010, His Majesty the King Norodom Sihamoni appointed Dr. Siegfried Blunk (Germany) as new international Co-Investigating Judge. Judge Blunk studied Law at Munich University and he wrote a PHD thesis about International Law. He was appointed as prosecutor in 1972, and in 1977 he was appointed as judge where he handled both civil and criminal cases for the next 26 years. From 2003-2005 he served as international Judie in the hybrid court established by United Nations Transitional Administration in East Timor. He has been a reserve Co-Investigating Judge at the ECCC since 2008. Mr. Laurent Kasper-Ansermet (Switzerland) has been appointed as new international reserve Co-Investigating Judge. Judge Blunk assumed office on 1 December 2010.

New financial contributions to ECCC. During the last semester of 2010, United Kingdom and Germany contributed to the ECCC Budget with 215.000 and 1.2 million USD respectively.

VII. SPECIAL TRIBUNAL FOR THE LEBANON (STL)

A) Procedural incidents

On 10 November, the Appeals Chamber issued a unanimous opinion rejecting the Prosecutor's appeal of the recent decision by the Pre-Trial Judge, Daniel Fransen, relating to the request by Mr Jamil El Sayed for access to documents about his detention by the Lebanese authorities. The Appeals Chamber also found that the STL has jurisdiction to consider Mr El Sayed's request and determined that Mr El Sayed has legal grounds to bring this application before the Tribunal. Mr El Sayed has claimed that he was wrongly detained by the Lebanese authorities on the basis of false testimony, which he alleges is now in the possession of the Tribunal's Prosecutor. He has asked the Tribunal for access to this evidence so that he can pursue civil claims in national courts.

B) News

New appointments. On 7 October 2010, the Head of Defence Office of the Tribunal, Mr. François Roux, announced the appointment and arrival of Ms. Alia Aoun as his Deputy. Ms. Aoun, a Lebanese national, was trained in law at St. Joseph University in Lebanon. Since completing her training, Ms. Aoun practised law in Paris, France for 15 years. In her law practice, she focuses on the representation of persons before the criminal courts. For several years, the Deputy Head was responsible for the assignment and coordination of Defence counsel operating within a legal aid system. In addition, she taught criminal law and procedure at the Paris Bar School and has published extensively in this field.

On 10 December 2010, the Secretary-General of the United Nations, Ban Ki-Moon, appointed Herman von Hebel to the post of Registrar of the Special Tribunal for Lebanon. Mr von Hebel, is a Dutch national with decades of experience in international law at three tribunals including the STL, as well as for the Government of the Netherlands. Mr von Hebel was previously the acting Registrar for the STL, the Registrar of the Special Court for Sierra Leone and a senior legal officer for the International Criminal Tribunal for the former Yugoslavia. He was also instrumental in the negotiations of the Rome Statute, which led to the establishment of the International Criminal Court.

STL President and Vice-President reelected. On 5 November 2010, the Appeals Judges of the STL unanimously re-elected Judge Antonio Cassese as President of the Tribunal and Judge Ralph Riachy was also confirmed Vice-President.

Amendments of the Rules of Procedure and Evidence. The Judges of the STL met in a Plenary session from 8 to 11 November 2010 to consider, among other issues, proposed amendments to the Rules of Procedure and Evidence (RPE). Amongst the most important were changes to the rules governing the service of an indictment by detailing the practical steps that must be taken after the confirmation of an indictment, in particular regarding the start of in absentia proceedings. The new framework creates more legal certainty for accused and other parties in the proceedings. The Judges also adopted a procedure allowing the Pre-Trial Judge to submit questions to the Appeals Chamber on the interpretation of the applicable law that he believes are necessary for the confirmation of any indictment.

Memorandum of Understanding. On 16 December 2010, the STL signed a Memorandum of Understanding with the Netherlands Forensic Institute (NFI). The purpose of the agreement is to establish a framework for the provision of forensic science services by the NFI to the STL.

LAW OF THE SEA

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

A) New cases

Saint Vincent and the Grenadines v. Spain. On 24 November 2010, Saint Vincent and the Grenadines instituted proceedings against Spain in a dispute concerning the *MV Louisa,* flying the flag of Saint Vincent and the Grenadines, arrested on 1 February 2006 by the Spanish authorities and held since that date. According to the Applicant, the *MV Louisa* was involved in conducting sonar and cesium magnetic surveys of the sea floor of the Bay of Cadiz in order to locate and record indications of oil and methane gas. The Applicant states that the vessel was arrested for alleged violations of Spain's historical patrimony or marine environment laws, that various members of the crew were also arrested but have since been released and that the vessel is being held without bond in the port of El Puerto de Santa Maria. The Applicant maintains that the vessel was involved in scientific research with a valid permit from the coastal State. The Applicant claims that Spain has violated articles 73, 87, 226, 245 and 303 of the United Nations Convention on the Law of the Sea and requests the Tribunal to award damages in the amount of "not less than $10,000,000". The Application instituting proceedings before the Tribunal includes a request for provisional measures under article 290, paragraph 1, of the Convention, in which the Tribunal is requested, *inter alia*, to order the Respondent to release the *MV Louisa* and return the property seized.

On 23 December 2010, the Tribunal issued its decision on provisional measures, concluding that, in the circumstances of the case, there is a real and imminent risk that irreparable prejudice may be caused to the rights of the parties in dispute before the Tribunal so as to warrant the prescription of the provisional measures requested by Saint Vincent and the Grenadines.

B) Pendant cases

Request for an Advisory Opinion on the responsibilities and obligations of States sponsoring persons and entities with respect to activities in the International Seabed Area. In the Order of 28 July 2010, the President of the Seabed Disputes Chamber extended to 19 August 2010 the time-limit within which statements may be presented to the Seabed Disputes Chamber, in accordance with article 133, paragraph 3, of the Rules of the Tribunal. The public hearings began on 14 September 2010.

Nine States and three intergovernmental organizations have expressed their intention to participate in the hearings. These are: Federal Republic of Germany, Kingdom of the

Netherlands, the Argentine Republic, Republic of Chile, Republic of Fiji Islands, United Mexican States, Republic of Nauru, United Kingdom of Great Britain and Northern Ireland, Russian Federation, International Seabed Authority, Intergovernmental Oceanographic Commission, International Union for Conservation of Nature.

POLITICAL AND ECONOMIC COOPERATION

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

A) Judgements

Judgement of 10 December 2010, Case E-1/10 Periscopus AS v Oslo Børs ASA and Erik Must AS (Adjustment of the bid price for a mandatory takeover bid). In this Judgement, the EFTA Court gave a preliminary ruling on a question referred to it by the Oslo District Court in Norway concerning the interpretation of the bid price rules contained in Article 5(4) of the Takeover Directive (Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids). Under the Norwegian Securities Trading Act, the bid price for mandatory bids shall be at least as high as the highest price paid by the offeror during the six-month period preceding the time at which the obligation to make a bid arose; however, if it is clear that the market price at the time when the obligation to make the bid arose was higher, the bid price shall be at least as high as the market price. The plaintiff in the national proceedings, Periscopus AS, argues that the latter was the case when Erik Must AS issued a mandatory bid for the shares of Gyldendal ASA. At the time, Periscopus AS was the second-largest shareholder of Gyldendal ASA, controlling 30.2% of the shares. The Court found that a rule that adjusts the bid price with reference to the term "market price" without further clarification of that term does not satisfy these conditions. It held that, in particular, further clarification is needed of the time interval relevant for determining the "market price", whether or not the "market price" must be calculated on the basis of a volume-weighted average, and whether actual trades are necessary or standing buy or sell orders suffice in order to establish a "market price".

B) Advisory Opinions

Advisory Opinion of 10 December 2010, Case E-2/10 Þór Kolbeinsson v the Icelandic State (Liability for losses suffered by worker after accident at work). In this case, the Court decided on questions referred to it by the Reykjavik District Court in Iceland concerning two directives on safety and health at work (Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work and Directive 92/57/EEC on the implementation of minimum safety and health requirements at temporary or mobile construction sites). The Court found that when it has been established

that the employer has not on his own initiative complied with rules regarding safety and conditions in the work place it is incompatible with the Directives to hold a worker liable under national tort law for all, or the greater share, of the losses suffered as a result of an accident at work due to his own contributory negligence. The conclusion may however be different in exceptional circumstances, such as where the employee has caused the accident wilfully or with gross negligence. Yet even in such cases a complete denial of compensation would not be in compliance with the Directives except in extreme cases of the employee being substantially more to blame for the accident than the employer. Furthermore, the Court found that an EEA State may be held liable for breach of the rule on contributory negligence inherent in the Directives provided that the breach is sufficiently serious. It is for the national court to decide in accordance with the settled case law on State liability for breaches of EEA law whether this condition is fulfilled in the case before it

Advisory Opinion of 17 December 2010, Case E-5/10 Dr Joachim Kottke v *Präsidial Anstalt* and *Sweetyle Stiftung (National rules which require non-resident claimants to furnishsecurity for costs can constitute unjustified discriminationunder the EEA Agreement).* The Court resolved questions referred to it by the Princely Court of Appeal ("Fürstliches Obergericht") regarding the interpretation of Article 4 of the EEA Agreement. The plaintiff is a German lawyer who, in his capacity as the executor of the will of a German resident, is seeking to have various instructions issued by the deceased to Präsidial Anstalt to establish Sweetyle Stiftung, both registered in Vaduz, Liechtenstein, declared void, ineffective or set aside. The Court found that a rule of domestic civil procedure, such as the one at issue in the national proceedings, entailed indirect discrimination within the meaning of Article 4 of the EEA Agreement, as it made it more difficult for nationals of other EEA States to bring a civil action before the domestic courts than for nationals of the State in question. However, the Court also found that a rule of national law, which took account of the difficulties in enforcing judgments in foreign jurisdictions and sought to protect the interests of defendants by requiring foreign resident plaintiffs to provide security for costs and thus put them in a position comparable to that of a defendant sued by a plaintiff within the same jurisdiction, might in principle constitute a legitimate and justifiable public policy objective. In order for a discrimination to be thus justified, the Court held, that the provision of national law must be deemed to be necessary and not excessive in attaining the public policy objectives.

POLITICAL AND ECONOMIC INTEGRATION

- **Europa**

X. BENELUX COURT OF JUSTICE (WWW.COURBENELUXHOF.BE)

A) Judgements

Judgement of 23 December 2010, D. Engels / Deawoo Electronics Europe, A-2009/3. The Casation Court of Belgium requested the Court to interpretate article 12 of the Benelux Uniform Act and article 2.19 of the Benelux Convention on Intelectual Proprerty, dealing with the protection of the titular of a trade mark.

- **America**

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

A) Resolutions

Ordonnance of 9 November 2010, Farmagro S.A et alia v. Perou, Action for infringement 05-AI-2008 (Summary procedure for non fulfillment of sentence). Following its Ordonnance of 18 August 2010, the Tribunal concluded that the State did not probe the fulfillment of Judgement of 27 January 2010, 05-AI-2008.

Ordonnance of 27 October 2010, Secretary General v. Ecuador, Action for infringement 136-AI-2004 (Summary procedure for non fulfillment of sentence). In this case, the Tribunal finally declared that the State had complied with the sentence.

B) Prejudicial interpretations

As usual, the most part of TJCA resolutions issued during this period –around 50- deal with its prejudicial function, specially regarding the Law of Intellectual and Industrial Proprerty (Decisions nº 344 and 486, on trade marks, patents, utility models, etc.).

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

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

INTERNATIONAL ARBITRAL TRIBUNALS

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

A) Awards

Award of 26 October 2010 on Jurisdiction, Arbitrability and Suspension, Eureko B.V. v. The Slovak Republic, PCA Case No. 2008-13. In this Award, the Tribunal:

(a) DISMISSES the "Intra-EU Jurisdictional Objection" advanced by Respondent and decides that it has jurisdiction over the dispute;

(b) REJECTS Respondent's request to suspend the proceedings until the European Commission and/or the ECJ have come to a decision on the EU law aspects of the infringement proceedings;

(c) RESERVES all questions concerning the merits, costs, fees and expenses, including the Parties' costs of legal representation, for subsequent determination; and

(d) INVITES the Parties to confer regarding the procedural calendar for the merits phase of the arbitration, and to report to the Tribunal in this respect within 14 days of receipt of this Award.

B) Procedural Orders

Bilcon of Delaware et al v. Government of Canada. On 16 July and 2 September 2010, the Arbitral Tribunal delivered an Order dealing with the production of documents, as well as with the timing of Memorial, Counter-Memorial, Reply and Rejoinder, fixing 19 February 2011 as Date A of reference according to Procedural Order 9.

C) News

New member State. On 14 July 2010, the Republic of the Philippines acceded to the 1907 Convention for the Pacific Settlement of International Disputes, and became a member state of the PCA effective 12 September 2010.