CHRONICLE ON INTERNATIONAL COURTS AND TRIBUNALS (JANUARY - JUNE, 2010)

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INTRODUCTION

During the last semester of 2009, the labour of the International Courts and Tribunals (ICT) may be feautered, once again, as widely, highly positive, as shown through their increasing activities. This high-valued balance allows us to verify the solide ICT versatility and efficacy in managing and settling the most heterogeneous international disputes and conflicts.

On the side of the *positive dimension* of ICT activity, it must be highlighted the increasing number of cases before the International Court of Justice (reaching the number of 15), so as the activity of the International Crimininal Tribunals for the former Yugoslavia and Rwanda, forecasting to finish its mandate in less than three years; as well as the great advances to accomplish the mission of the Special Court for Sierra Leone. In addition, some ICT were recently backed by States ratifying its ruling norms, as happened with Bangladesh and the International Criminal Court; or Madagascar and the Permanent Court of Arbitration.

On the side of the *negative dimension* of ICT activity, it´s necessary to remark the difficulties for the Special Tribunal for the Lebanon, target of many political opinions and suffering from several changes in its composition in a brief period of time.

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

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I. ERNATIONAL JUDICIAL TRIBUNALS

1. General Jurisdiction

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

Judgments

- *Judgment of 20 April 2010, Pulp Mills on the River Uruguay (Argentina v. Uruguay).* The Court found, by thirteen votes to one, that Uruguay had breached its procedural obligations to co-operate with Argentina and the Administrative Commission of the River Uruguay (CARU) during the development of plans for the CMB (ENCE) and Orion (Botnia) pulp mills The Court declared, by eleven votes to three, that Uruguay had not breached its substantive obligations for the protection of the environment provided for by the Statute of the River Uruguay by authorizing the construction and commissioning of the Orion (Botnia) mill. Finally, the Court rejected, unanimously, all other submissions by the Parties.

New cases

- *IFAD Request for advisory opinion.* On April 26, the ICJ received a request for an advisory opinion from the International Fund for Agricultural Development (IFAD), concerning a judgment rendered by an administrative court, the Administrative Tribunal of the International Labour Organization. IFAD is one of the specialized agencies of the United Nations which have been authorized by the General Assembly, on the basis of Article 96, paragraph 2, of the Charter of the United Nations, to request advisory opinions of the Court on legal questions arising within the scope of their activities. The request contains the following questions:

> I. Was the ILOAT competent, under Article II of its Statute, to hear the complaint introduced against the International Fund for Agricultural Development (hereby the Fund) on 8 July 2008 by Ms A.T.S.G., an individual who was a member of the staff of the Global Mechanism of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (hereby the Convention) for which the Fund acts merely as housing organization?
> II. Given that the record shows that the parties to the dispute underlying the ILOAT's Judgment No. 2867 were in agreement that the Fund and the Global Mechanism are separate legal entities and that the Complainant was a member of the staff of the Global Mechanism, and considering all the relevant documents, rules and principles, was the ILOAT's statement, made in support of its decision confirming its jurisdiction, that 'the Global Mechanism is to be assimilated to the various administrative units of the Fund for all administrative purposes' and that the 'effect of this is that administrative decisions taken by the Managing Director in relation to staff in the Global Mechanism are, in law, decisions of the Fund' outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?
> III. Was the ILOAT's general statement, made in support of its decision confirming its jurisdiction, that 'the personnel of the Global Mechanism are staff members of the Fund' outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?

IV. Was the ILOAT's decision confirming its jurisdiction to entertain the Complainant's plea alleging an abuse of authority by the Global Mechanism's Managing Director outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?
V. Was the ILOAT's decision confirming its jurisdiction to entertain the Complainant's plea that the Managing Director's decision not to renew the Complainant's contract constituted an error of law outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?
VI. Was the ILOAT's decision confirming its jurisdiction to interpret the Memorandum of Understanding between the Conference of the Parties to the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa and IFAD (hereby the MoU), the Convention, and the Agreement Establishing IFAD beyond its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?
VII. Was the ILOAT's decision confirming its jurisdiction to determine that by discharging an intermediary and supporting role under the MoU, the President was acting on behalf of IFAD outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?
VIII. Was the ILOAT's decision confirming its jurisdiction to substitute the discretionary decision of the Managing Director of the Global Mechanism with its own outside its jurisdiction and/or did it constitute a fundamental fault in the procedure followed by the ILOAT?
IX. What is the validity of the decision given by the ILOAT in its Judgment No. 2867?

- *International obligations concerning whaling (Australia v. Japan)*. On May 31, Australia instituted proceedings against the Government of Japan, alleging that "Japan's continued pursuit of a large scale programme of whaling under the Second Phase of its Japanese Whale Research Programme under Special Permit in the Antarctic ("JARPA II") [is] in breach of obligations assumed by Japan under the International Convention for the Regulation of Whaling ("ICRW"), as well as its other international obligations for the preservation of marine mammals and marine environment". The Applicant contends, in particular, that Japan "has breached and is continuing to breach the following obligations under the ICRW:
(a) the obligation under paragraph 10 (e) of the Schedule to the ICRW to observe in good faith the zero catch limit in relation to the killing of whales for commercial purposes; and
(b) the obligation under paragraph 7 (b) of the Schedule to the ICRW to act in good faith to refrain from undertaking commercial whaling of humpback and fin whales in the Southern Ocean Sanctuary."
Australia points out that "having regard to the scale of the JARPA II programme, the lack of any demonstrated relevance for the conservation and management of whale stocks, and to the risks presented to targeted species and stocks, the JARPA II programme cannot be justified under Article VIII of the ICRW" (this article regulates the granting of special permits to kill, take and treat whales for purposes of scientific research). Australia alleges further that Japan has also breached and is continuing to breach, *inter alia*, its obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora and under the Convention on Biological Diversity. At the end of its Application, Australia requests the Court to adjudge and declare that "Japan is in breach of its international obligations in implementing the JARPA II programme in the Southern Ocean", and to order that Japan:

"(a) cease implementation of JARPA II; (b) revoke any authorisations, permits or licences allowing the activities which are the subject of this application to be undertaken; and (c) provide assurances and guarantees that it will not take any further action under the JARPA II or any similar programme until such programme has been brought into conformity with its obligations under international law."

Pendant cases

- *The Former Yugoslav Republic of Macedonia v. Greece.* On March 12, the Court authorized the submission of a Reply by the former Yugoslav Republic of Macedonia and a Rejoinder by the Hellenic Republic, fixing 9 June 2010 and 27 October 2010 as the respective time-limits for the filing of these written pleadings.

- *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*. On February 4, the Court fixed 20 December 2010 and 4 November 2011 as the respective time-limits for the filing of these written pleadings. The Court took account of the fact that the Counter-Memorial filed by Serbia on 4 January 2010 contains counter-claims in the form of the following submissions:

"On the basis of the facts and legal arguments presented in this Counter-Memorial, the Republic of Serbia respectfully requests the International Court of Justice to adjudge and declare:

. . . . . .

4. That the Republic of Croatia has violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide by committing, during and after the operation Storm in August 1995, the following acts with intent to destroy as such the part of the Serb national and ethnical group living in the Krajina Region (UN Protected Areas North and South) in Croatia:

- killing members of the group;
- causing serious and bodily or mental harm to members of the group; and
- deliberately inflicting on the group conditions of life calculated to bring about its partial physical destruction.

5. Alternatively, that the Republic of Croatia has violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide by conspiring to commit genocide against the part of the Serb national and ethnical group living in the Krajina Region (UN Protected Areas North and South) in Croatia.

6. As a subsidiary finding, that the Republic of Croatia has violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide by having failed and by still failing to punish acts of genocide that have been committed against the part of the Serb national and ethnical group living in the Krajina Region (UN Protected Areas North and South) in Croatia.

7. That the violations of international law set out in paragraphs 4, 5 and 6 above constitute wrongful acts attributable to the Republic of Croatia which entail its international responsibility, and, accordingly,

(1) that the Republic of Croatia shall immediately take effective steps to ensure full compliance with its obligation to punish acts of genocide as defined by Article II of the Convention, or any other acts proscribed by Article III of the Convention committed on its territory before, during and after operation Storm; and

(2) that the Republic of Croatia shall redress the consequences of its international wrongful acts, that is, in particular:

(a) pay full compensation to the members of the Serb national and ethnic group from the Republic of Croatia for all damages and losses caused by the acts of genocide;

(b) establish all necessary legal conditions and secure environment for the safe and free return of the members of the Serb national and ethnical group to their homes in the Republic of Croatia, and to ensure conditions of their peaceful and normal life including full respect for their national and human rights;
(c) amend its Law on Public Holidays, Remembrance Days and Non-Working Days, by way of removing the 'Day of Victory and Homeland Gratitude' and the 'Day of Croatian Defenders', celebrated on the 5th of August, as a day of the triumph in the genocidal operation Storm, from its list of public holidays."

Given the absence of objections by Croatia to the admissibility of the above-mentioned counter-claims, the Court did not consider that it was required to rule definitively at this stage on the question of whether the said claims fulfilled the conditions set forth in Article 80, paragraph 1, of the Rules of Court.
The Court stated that it was also appropriate, "in order to ensure strict equality between the Parties, to reserve the right for Croatia to express its views for a second time in writing within a reasonable time-limit on Serbia's counter-claims, in an additional pleading whose submission may be dealt with in a subsequent Order.

- *Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Belgium v. Switzerland).* On January 4, the Court 23 August 2010 as the time-limit for the filing of a Memorial by the Kingdom of Belgium and 25 April 2011 as the time-limit for the filing of a Counter-Memorial by the Swiss Confederation.

- *Territorial and maritime dispute (Nicaragua v. Colombia).* On February 25, Costa Rica filed an Application for permission to intervene in the case, stating that "[b]oth Nicaragua and Colombia, in their boundary claims against each other, claim maritime area to which Costa Rica is entitled". Costa Rica affirms that, in their submissions on the maritime boundary between them, "the Parties have put forward arguments that demonstrate that the prolongation of their maritime boundary will eventually run into maritime zones in which third States have rights and interests. As Nicaragua's adjacent neighbour to the south, Costa Rica is one of those third States. It is evident that neither Party has properly informed the Court of the nature or extent of third State interests in the area." Stating that this is the context in which it comes before the Court, Costa Rica makes clear that it has no intention of intervening in those aspects of the proceedings relating to the territorial dispute between Nicaragua and Colombia. According to the Application, "it is only the maritime boundary aspect of the case with which Costa Rica is concerned, and only that part of the maritime boundary that might affect Costa Rica's legal rights and interests. It is the purpose of Costa Rica's intervention to inform the Court of Costa Rica's legal rights and interests so that these may remain unaffected as the Court delimits the maritime boundary between Nicaragua and Colombia, the parties to the case before it. Costa Rica does not seek to become a party to the case". Costa Rica specifies the two-fold object of its intervention:

  "First, generally, to protect the legal rights and interests of Costa Rica in the Caribbean Sea by all legal means available . . .
  Second, to inform the Court of the nature of Costa Rica's legal rights and interests that could be affected by the Court's maritime delimitation decision in this case".

On June 10, the Republic of Honduras filed in the Registry an Application for permission to intervene in the case, asserting that Nicaragua is putting forward maritime claims in its dispute with Colombia that lie in a zone of the Caribbean Sea in which Honduras has rights and interests. Honduras points out that part of the maritime boundary between Honduras's and Nicaragua's respective territorial seas, continental shelves and exclusive economic zones was determined in the Court's Judgment of 8 October 2007 in the case concerning *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras).* Honduras adds that the Court refrained at that time from specifying an endpoint of the maritime boundary between the two States in order to avoid implicating the rights of third States in the region. Honduras further states that it concluded a maritime delimitation treaty in 1986 with Colombia and contends that it holds rights under that treaty in the maritime zone north of the 15th parallel. Honduras thus asserts that it has "an actual, present, direct and concrete interest of a legal nature in the delimitation of maritime areas in the zone to the north of the frontier line deriving from the 1986 Treaty" and that any claim by Nicaragua in respect of this zone is liable to affect Honduras's rights and interests. Honduras states that the object of its Application for permission to intervene, based on Article 62 of the Statute of the Court, is "to protect [its] rights . . . in the Caribbean Sea by all the legal means available" and "to inform the Court of the nature of the legal rights and interests of Honduras which could be affected by the decision of the Court, taking account of the maritime boundaries claimed by the parties in the case brought before the Court". Specifically, Honduras considers that the permission to intervene it is seeking from the Court "is aimed at protecting [its] interests of a legal nature by eliminating the existing uncertainty in respect of the fixing of its maritime boundaries with Nicaragua in the maritime zone north of the 15th parallel that is the subject of [the pending] proceedings, with a view to enhancing legal security for all States wishing to carry on their legitimate activities in the region". Honduras states that its intervention "is confined exclusively to the maritime delimitation in the zone delineated by the 1986 Treaty and excludes islands, cays and all other geographical features situated outside the maritime areas at issue". Honduras primarily requests the Court to be permitted to intervene in the proceedings as a State party. To found the jurisdiction of the Court for this purpose as between itself, Nicaragua and Colombia, Honduras relies on Article XXXI of the American Treaty on Pacific Settlement, signed on 30 April 1948 and officially designated as the "Pact of Bogotá". Should the Court accede to its request to intervene as a party, Honduras indicates that, in accordance with Article 59 of the Statute of the Court, it "would recognize the binding force of the decision that would be rendered". In the alternative, if the Court does not accede to its request to intervene as a State party, Honduras requests the Court for permission "to intervene as a non-party". In accordance with Article 83, paragraph 1, of the Rules of Court, the Application of Honduras was communicated forthwith to Nicaragua and Colombia. The President of the Court has fixed 2 September 2010 as the time-limit for these two States to furnish written observations on the Application. It will be for the Court to decide whether the Application for permission to intervene should be granted. If

objections are filed to the Application, the Court will hear the Parties and the Republic of Honduras before deciding, pursuant to Article 84, paragraph 2, of the Rules of Court.

- *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo).* The ICJ held public hearings in the case from Monday 19 April to Friday 23 April 2010, at the Peace Palace. Then, on April 29, the Court started its deliberations.
- *Maritime dispute (Peru v. Chile).* On April 28, the Court has authorized the submission of a Reply by the Republic of Peru and a Rejoinder by the Republic of Chile, fixing 9 November 2010 and 11 July 2011 as the respective time-limits for the filing of these written pleadings.
- **Case removed**. *Certain Questions concerning Diplomatic Relations (Honduras v. Brazil).* This case brought by the Republic of Honduras against the Federative Republic of Brazil on 28 October 2009 has been removed from the Court's List at the request of Honduras. By a letter of April 30, Mr. Mario Miguel Canahuati, Minister for Foreign Affairs of Honduras, informed the Court that the Honduran Government was "not going on with the proceedings initiated by the Application filed on 28 October 2009 against the Federative Republic of Brazil" and that "in so far as necessary, the Honduran Government accordingly [was] withdraw[ing] this Application from the Registry". The President of the Court made an Order on 12 May 2010 in which, after noting that the Brazilian Government had not taken any step in the proceedings in the case, he recorded the discontinuance by the Republic of Honduras of the proceedings instituted by the Application filed on 28 October 2009 and ordered that the case be removed from the List.

News

- *Two ICJ members resigned.* Mr. Shi Jiuyong, former President and former Vice-President of the ICJ resigned as a Member of the Court with effect from 28 May 2010. Judge Shi's term as Member of the Court would have expired on 5 February 2012. A Member of the Court since 6 February 1994, Judge Shi was re-elected as from 6 February 2003. He was the Vice-President of the Court from 2000 to 2003, and its President from 2003 to 2006.
  On June 10, it was announced that Judge Thomas Buergenthal would resign as Member of the ICJ with effect from 6 September 2010. His term would have expired on 5 February 2015. Judge Buergenthal has been a Member of the Court since 2 March 2000. After his first term, he was re-elected as from 6 February 2006. Former Judge and President of the Inter-American Court of Human Rights and the Administrative Tribunal of the Inter-American Development Bank, Judge Buergenthal is also a Member of the American Bar Association, the American Society of International Law, the American Law Institute, the Council on Foreign Relations and the German Society of International Law. In addition, he is an associé of the Institut de droit international.

- *Election of new ICJ member*. On June 29, the General Assembly and the Security Council of the United Nations elected Ms Xue Hanqin as a Member of the ICJ, with immediate effect. Of Chinese nationality, Ms Xue Hanqin succeeds Judge Shi Jiuyong, former Judge, former President and former Vice-President of the Court, who had resigned as of May 28. Pursuant to Article 15 of the Statute of the Court, Ms Xue will hold office for the remainder of Judge Shi's term, which will expire on 5 February 2012.

2. International Criminal Law

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

New cases

- *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus Abdallah Banda Abakaer Nourain (Banda) and Saleh Mohammed Jerbo Jamus (Jerbo), (Darfur)*. On June 16, both suspected of war crimes arrived voluntarily at the ICC following summonses to appear issued first under seal on 27 August, 2009, by Pre-Trial Chamber I. Their first appearance before the Chamber took place the following day for a confirmation hearing, held to determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. If the charges are confirmed, the Pre-Trial Chamber commits the case for trial before a trial chamber, which will conduct the subsequent phase of the proceedings: the trial. Banda and Jerbo are charged with three counts of war crimes allegedly committed during an attack carried out on 29 September, 2007, against the African Union Mission in Sudan (AMIS), a peace-keeping mission stationed at the Haskanita Military Group Site (MGS Haskanita) in the locality of Umm Kadada, North Darfur.

Pendant cases

- *The Prosecutor v. the Sudanese President, Omar Hassan Ahmad AL BASHIR (Darfur)*. On February 3, the Appeals Chamber reversed, by unanimous decision, Pre-Trial Chamber I decision of 4 March, 2009, to the extent that Pre-Trial Chamber I decided not to issue a warrant of arrest in respect of the charge of genocide. The Appeals Chamber directed the Pre-Trial Chamber to decide anew whether or not the arrest warrant should be extended to cover the charge of genocide.

- *The Prosecutor v. Bahar Idriss Abu Garda (Darfur)*. On February 8, Pre-Trial Chamber I decided not to confirm the charges in this case. The Chamber was not satisfied that there was sufficient evidence to establish substantial grounds to believe that Bahar Idriss Abu Garda could be held criminally responsible either as a direct or as an indirect co-perpetrator for the commission of the crimes with which he was charged by the Prosecution. Abu Garda was charged with three war crimes, namely violence to life,

intentionally directing attacks against personnel, installations, material, units and vehicles involved in a peacekeeping mission, and pillaging, allegedly committed during an attack carried out on 29 September, 2007, against the African Union Mission in Sudan, a peace-keeping mission stationed at the Haskanita Military Group Site, in the locality of Umm Kadada, North Darfur.

Other procedural incidents

- *The Prosecutor v. Ahmad Muhammad Harun (Ahmad Harun) and Ali Muhammad Ali Abd-Al-Rahman (Ali Kushayb), (Darfur).* On May 25, Pre-Trial Chamber I the ICC Registrar to transmit the decision informing the United Nations Security Council about the lack of cooperation by the Republic of the Sudan in the case of *the Prosecutor v. Ahmad Muhammad Harun (Ahmad Harun) and Ali Muhammad Ali Abd-Al Rahman (Ali Kushayb)*, in order for the Security Council to take any action it may deem appropriate. Pre-Trial Chamber I was seized by the Prosecution´s request of 19 April, 2010, and concluded that the Republic of the Sudan is failing to comply with its cooperation obligations stemming from the Security Council Resolution 1593 (2005) in relation to the enforcement of the warrants of arrest issued by the Chamber against Ahmad Harun and Ali Kushayb. This decision is however without prejudice to other decisions or actions that the Chamber may take in respect of other cases arising in the situation in Darfur. The Republic of the Sudan is not a State Party to the Rome Statute. However, it has the obligation to "cooperate fully with and provide any necessary assistance to the Court and the Prosecutor" pursuant to paragraph 2 of the Security Council resolution 1593 (2005). The Republic of the Sudan is a member of the United Nations since 12 November, 1956, and has agreed "to accept and carry out the decisions of the Security Council" in accordance with article 25 of the Charter of the United Nations.

New investigations

- *Kenya*. On March 31, Pre-Trial Chamber II, by majority, granted the Prosecutor´s request to commence an investigation on crimes against humanity allegedly committed in the Republic of Kenya. In the decision, the majority finds that upon examination of the available information, bearing in mind the nature of the proceedings under article 15 of the Statute, the low threshold applicable at this stage, as well as the object and purpose of this decision, the information available provides a reasonable basis to believe that crimes against humanity have been committed on Kenyan territory. The majority moreover found that all criteria for the exercise of the Court´s jurisdiction were satisfied, to the standard of proof applicable at this stage. The majority therefore granted the Prosecutor´s request, and allowed him to commence an investigation covering alleged crimes against humanity committed during the events that took place between 1 June 2005 (i.e., the date of the Statute´s entry into force for the Republic of Kenya) and 26 November 2009 (i.e., the date of the filing of the Prosecutor´s Request).

News

- *Election of new judges*. On January 20, two new judges were sworn in: Ms Silvia Fernández de Gurmendi (Argentina), who joined the Pre-Trial division, and Ms Kuniko Ozaki (Japan), who joined the Trial division.

- *Ratifications of the Rome Statute*. On March 23, the government of Bangladesh ratified the Rome Statute, which entered into force for Bangladesh on June 1, bringing the total number of States Parties to the Rome Statute to 111.

- *Sentences enforcement agreements.* On June 1, the Kingdom of Belgium, the Kingdom of Denmark and the Republic of Finland have signed agreements with the ICC to enforce the judges´ final sentences of imprisonment. The Republic of Austria, in 2005, and the United Kingdom, in 2007, had become the first States to enter into an agreement with the Court to enforce the Court sentences.

- *Review Conference and amendments to the Rome Statute.* On June 11, the Review Conference of the Rome Statute concluded in Kampala, Uganda, after meeting for two weeks. Around 4600 representatives of States, and intergovernmental and non-governmental organizations attended the Conference. The Review Conference adopted the following amendments:

- *Crime of aggression.* It was included a definition of the crime as well as the conditions under which the Court could exercise jurisdiction with respect to it. The actual exercise of jurisdiction is subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute. The Conference based the definition of the crime of aggression on United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, and in this context agreed to qualify as aggression, a crime committed by a political or military leader which, by its character, gravity and scale constituted a manifest violation of the Charter. As regards the Court´s exercise of jurisdiction, the Conference agreed that a situation in which an act of aggression appeared to have occurred could be referred to the Court by the Security Council, acting under Chapter VII of the United Nations Charter, irrespective as to whether it involved States Parties or non-States Parties. Moreover, while acknowledging the Security Council´s role in determining the existence of an act of aggression, the Conference agreed to authorize the Prosecutor, in the absence of such determination, to initiate an investigation on his own initiative or upon request from a State Party. In order to do so, however, the Prosecutor would have to obtain prior authorization from the Pre-Trial Division of the Court. Also, under these circumstances, the Court would not have jurisdiction in respect to crimes of aggression committed on the territory of non-States Parties or by their nationals or with regard to States Parties that had declared that they did not accept the Court´s jurisdiction over the crime of aggression.

- *Other crimes.* The Conference also adopted a resolution by which it amended article 8 of the Rome Statute to bring under the jurisdiction of the Court the war crime of employing certain poisonous weapons and expanding bullets, asphyxiating or poisonous gases, and all analogous liquids, materials and devices, when committed in armed conflicts not of an international character.

- *Seven years exclusion period for war crimes (article 124)*. Furthermore, the Conference adopted a resolution by which it decided to retain article 124 in its current form and agreed to again review its provisions during the fourteenth session of the Assembly of States Parties, in 2015. Article 124 allows new States Parties to opt for excluding from the Court´s jurisdiction war crimes allegedly committed by its nationals or on its territory for a period of seven years.

  Finally, the Conference adopted two resolutions, a declaration and summaries of discussions. The *resolution on the impact of the Rome Statute system on victims and affected communities,* inter alia, recognized, as essential components of justice, the right of victims to equal and effective access to justice, support and protection, adequate and prompt reparation for harm suffered and access to information concerning violations and redress mechanisms. Moreover, the Conference underlined the need to optimize outreach activities and called for contributions for the Trust Fund for Victims. The Conference also adopted a *resolution on the issue of complementarity*, wherein it recognized the primary responsibility of States to investigate and prosecute the most serious crimes of international concern and the desirability for States to assist each other in strengthening domestic capacity to ensure that investigations and prosecutions of serious crimes of international concern can take place at the national level. In the *Declaration on Cooperation*, the Conference emphasized that all States under an obligation to cooperate with the Court must do so. Particular reference was made to the crucial role that the execution of arrest warrants played in ensuring the effectiveness of the jurisdiction of the Court. Moreover, the Review Conference encouraged States Parties to continue to enhance their voluntary cooperation and to provide assistance to other States seeking to enhance their cooperation with the Court. In addition, the Conference took note of the summary of the roundtable discussion on cooperation. The Conference further took note of the moderator´s summary of the panel discussion held on the issue of peace and justice. The panel highlighted the paradigm shift the Court had brought about; there was now a positive relation between peace and justice. Although tension between the two continued to exist and had to be addressed, amnesties were no longer an option for the most serious crimes under the Rome Statute.

B) International Criminal Tribunal for the Former Yugoslavia (www.un.org/icty/index.html)

Judgments

- On March 15, *Zuhdija Tabaković* pleaded guilty to three of the six counts of contempt which he had been charged with after he agreed to provide a false statement at the trial of Milan and Sredoje Lukić. Trial Chamber II accepted the Plea Agreement reached between the Prosecution and the Defence and sentenced Tabaković to three months' imprisonment.

- On May 19, The Appeals Chamber affirmed the conviction of *Johan Tarčulovski*, a former police officer of the Former Yugoslav Republic of Macedonia (FYROM) for having ordered, planned and instigated crimes committed against ethnic Albanians during a police operation conducted on 12 August 2001 in the village of Ljuboten in the northern part of the FYROM. His sentence of 12 years' imprisonment was upheld. The Appeals Chamber also affirmed the acquittal of *Ljube Boškoski*, Minister of Interior of the FYROM from May 2001 until November 2002. On 10 July 2008, the Trial Chamber found Johan Tarčulovski guilty of ordering, planning and instigating the murder of three ethnic Albanian civilians, wanton destruction of twelve houses or other property and cruel treatment of thirteen ethnic Albanian civilians, all violations of the laws or customs of war. Ljube Boškoski was found not guilty on all charges with respect to his alleged superior responsibility for failing to punish his subordinates who committed crimes during and subsequent to the police operation on 12 August 2001.

- On May 19, The Appeals Chamber affirmed *Vojislav Šešelj's ("Šešelj")* conviction for contempt and his sentence of fifteen months imprisonment. On 24 July 2009, Trial Chamber II found Šešelj guilty of contempt for knowingly disclosing confidential information regarding protected witnesses. The Appeals Chamber dismissed all eight of Šešelj's grounds of appeal. Šešelj was born on 11 October 1954 in Sarajevo, Republic of Bosnia and Herzegovina. He is currently being tried before Trial Chamber III in the case of Prosecutor v. Vojislav Šešelj, Case No. IT-03-67-T, on 14 counts of crimes against humanity and violations of the laws or customs of war.

- On June 10, seven former high-ranking Bosnian Serb military and police officials were convicted by Trial Chamber II of a range of crimes committed in 1995 in relation to the fall of the enclaves of Srebrenica and Žepa, eastern Bosnia and Herzegovina. *Vujadin Popović*, the Chief of Security of the Drina Corps of the Bosnian Serb Army (VRS) and *Ljubiša Beara*, Chief of Security in the VRS Main staff were found guilty of genocide, extermination, murder and persecution and sentenced to life imprisonment. *Drago Nikolić*, the Chief of Security in the Zvornik Brigade, was found guilty of aiding and abetting genocide, extermination, murder and persecution and sentenced to 35 years' imprisonment. *Ljubomir Borovčanin*, Deputy Commander of the Special Police

Brigade of the police forces was convicted of aiding and abetting extermination, murder, persecution and forcible transfer (Judge Kwon dissenting) under Article 7(1) of the Statute and, as a superior, of murder as a crime against humanity and as a violation of the laws of customs of war under Article 7(3). He was sentenced to 17 years' imprisonment. *Radivoje Miletić*, the Chief of the Administration for Operations and Training at the VRS Main Staff was found guilty of murder by majority, persecution and inhumane acts (forcible transfer). He was sentenced to 19 years' imprisonment. *Milan Gvero*, the Assistant Commander for Moral, Legal and Religious Affairs of the VRS Main Staff, was found guilty of persecution and inhumane acts and acquitted of the two counts of murder and that of deportation. He was sentenced to 5 years' imprisonment. Vinko Pandurević, Commander of the Zvornik Brigade, was found guilty of aiding and abetting murder (Judge Kwon dissenting), persecution and inhumane acts. He was acquitted of charges of genocide, extermination and deportation. He was sentenced to 13 years' imprisonment. This judgement concerns the largest trial to date held before the Tribunal and deals with a wide range of crimes committed by the Bosnian Serb forces against Bosnian Muslims during and following the fall of the former UN protected zones of Srebrenica and Žepa in July 1995.

- On June 30, the Appeals Chamber terminated the appellate proceedings in the case of *Rasim Delić*, the former Commander of the Main Staff of the Army of Bosnia and Herzegovina (ABIH), who died on 16 April 2010 while on provisional release in Sarajevo. In the same decision, the Chamber ruled that the Trial Chamber's Judgement convicting Delić, on the basis of superior responsibility, for the crimes committed by the El Mujahed Detachment of the ABiH against captive Bosnian Serb soldiers in central Bosnia, shall be considered final. On 15 September 2008, the Trial Chamber sentenced Delić to three years' imprisonment for failing to take necessary and reasonable measures to prevent or punish the crimes committed by his subordinates in July and August 1995 in Livade and the Kamenica Camp near Zavidovići. Both the Defence and the Prosecution appealed this Judgement, and their oral arguments were heard by the Appeals Chamber in January 2010. Delić was granted provisional release in May 2009 pending the resolution of the appeals in this case. On 21 April, the Defence filed a request on behalf of Delić's son that the appellate proceedings continue.

  This is the first time in the history of this Tribunal and the International Criminal Tribunal for Rwanda where an appellant has died before the rendering of the appeal judgement.

  <u>News</u>

- *ICTY President´s address before the Security Council*. On June 18, the Tribunal's President, Judge Patrick Robinson, delivered his fourth Completion Strategy report to the United Nations Security Council in which he highlighted the adverse impact that

the alarming rate of staff attrition has had on the expeditious completion of the trials. He also reiterated his call for the creation of a trust fund for victims of war crimes. He stated, "In order to contribute to a lasting peace in the former Yugoslavia, justice must not only be retributive—it must also be restorative […] The International Criminal Court and the 111 States that have ratified the Rome Statute accept the importance of compensation to victims of war crimes, crimes against humanity, and genocide—and the United Nations must do the same." He added that the trust fund would "complement the Tribunal's criminal trials by providing victims with the necessary resources to rebuild their lives". Finally, he said that the latest completion strategy report estimates that all first instance trials will be completed by mid-2012, with the exception of that of Radovan Karadžić, which is expected to finish in late 2012. Most appellate work is scheduled to be completed by early 2014.
Since its inception 17 years ago, the Tribunal has indicted 161 persons for war crimes committed on the territory of the former Yugoslavia. The proceedings against 123 individuals have been completed. Only two indictees remain at large – Ratko Mladić and Goran Hadžić.

- *Extension of judges mandates*. On June 29, The Security Council unanimously adopted resolution 1931(2010), by which the terms of office of five permanent judges in the Appeals Judges were extended until 31 December 2012 and the terms of office of eight permanent trial and ten ad litem judges were extended until 31 December 2011 or until the completion of the cases to which they are assigned if sooner. The Council also underlined its intention to extend, by 30 June 2011, the terms of office of the trial judges based on the Tribunal's projected trial schedule. In the same Resolution the Council noted the concern expressed by ICTY President, Judge Patrick Robinson that the alarming rate of staff attrition was impacting adversely on the expeditious completion of the Tribunal's trials.

C) International Criminal Tribunal for Rwanda (ICTR) (www.ictr.org)

Judgments

- On February 11, Trial Chamber III declared *Tharcisse Muvunyi* guilty of direct and public incitement to commit genocide after his retrial and sentenced him to 15 years of imprisonment. Muvunyi will receive credit for his time served since he was arrested in the United Kingdom on 5 February 2000.

- On February 25, Lieutenant Colonel *Ephrem Setako*, head of the division of legal affairs in the Ministry of Defence in 1994, was sentenced to 25 years of imprisonment. He was found guilty of genocide, crimes against humanity (extermination) and serious violations of Article 3 common to the Geneva Conventions and Additional Protocol II (murder), but acquitted of complicity to commit genocide, murder as a crime against humanity and pillage as a war crime.

- On March 16, the Appeals Chamber affirmed *Léonidas Nshogoza*'s conviction for contempt of the Tribunal and sentence of 10 months in prison imposed by Trial Chamber III of the Tribunal on 2 July 2009.

- On March 18, the Appeals Chamber rendered two judgements; affirming *Simon Bikindi*'s conviction and sentence of 15 years in prison and reversing a number of convictions of Simèon Nchamihigo and reducing his sentence to 40 years instead of imprisonment for the remainder of his life. On 2 December 2008 Trial Chamber III found Bikindi a former singer, composer and leader of a ballet troupe called the "*Irindiro"* guilty of single count of direct and public incitement to commit genocide based on public exhortations to kill Tutsis, which he made on the Kivumu-Kayove road in Gisenyi prefecture in late June 1994. In the *Nchamihigo case*, the Appeals Chamber allowed Mr. Nchamihigo's appeal in part, reversing convictions rendered by Trial Chamber III on 24 September 2008 for genocide and murder as a crime against humanity for aiding and abetting the killing of Joséphine Mukashema, Hélène and Marie. It also reversed his conviction for genocide in relation to instigating the killings of refugees taken from Kamarampaka stadium on 16 April 1994 and for instigating the killings at Shangi parish and Hanika parish. It further reversed his convictions for genocide and extermination as a crime against humanity in relation to instigating the massacre at Mibilizi parish and hospital and the massacre at Nyakanyinya school. The Appeals Chamber then affirmed Nchamihigo's convictions for genocide and extermination as a crime against humanity for instigating killings, including those of Karangwa, Dr. Nagafizi and Ndayisaba's family on or about 7 April 1994 and for instigating the massacre in Gihundwe sector on 14 or 15 April 1994. It also affirmed his conviction for other inhumane acts as a crime against humanity for ordering the attack on Jean de Dieu Gakwandi. Finally, it affirmed his convictions for genocide and murder as a crime against humanity for instigating the killing of Father Boneza.

- On June 30, *Yussuf Munyakazi*, a former businessman in Bugarama, Cyangugu was sentenced to 25 years in prison by Trial Chamber I of the Tribunal, considering Munyakazi guilty of genocide and extermination as a crime against humanity. Trial Chamber I found that Munyakazi was a leader in incidents in Shangi parish on 29 April 1994 and Mibilizi parish on 30 April 1994 and that he was liable for the deaths of over 5,000 Tutsi civilians. The Chamber did not, however, hold that Munyakazi was part of a joint criminal enterprise. The judges also ruled based on circumstantial evidence that Munyakazi intended to destroy the Tutsi ethnic group in whole or in part.

Referrals to Rwanda jurisdiction

On June 8, twenty-five cases of persons investigated but not indicted by the Tribunal were transferred from the Office of the Prosecutor to Rwanda for further investigation and possible future action on 8 June 2010. This procedure was undertaken in

accordance with UN Security Council Resolution 1503, which urges that appropriate cases be prosecuted in competent national jurisdictions.

News

- *Death of convict.* On April 25, the ICTR was informed by the Government of Benin that Jean Bosco Barayagwiza had passed away that day at the ''Centre Hospitalier Départemental de l'Ouémé'' of Porto Novo, Republic of Benin, where he was admitted on 5 March 2010.

D) Special Court for Sierra Leone (SCSL) (www.sc-sl.org)

Pendant cases

- *Charles Taylor case.* The trial of former Liberian President Charles Taylor resumed on January 11, with the Prosecution and the Defence continuing their cross-examination of Mr. Taylor. In February, Charles Taylor completed his testimony, including cross-examination by the Prosecution and re-examination by his counsel. The second Defence witness began his testimony on February 22.

News

- *New Prosecutor and Registrar*. In March, the Secretary-General of the United Nations appointed Brenda Hollis as Prosecutor and Binta Mansaray as Registrar. Brenda Hollis, from the United States, has been Principal Trial Attorney at the Special Court since 2007, and leads the legal team responsible for prosecuting Charles Taylor. Binta Mansaray, from Sierra Leone, has served as Deputy Registrar since July 2007 and Acting Registrar since June 2009. She joined the Special Court in 2003 as Outreach Coordinator.

E) Extraordinary Chambers in the Courts of Cambodia (ECCC) (www.eccc.gov.kh)

News

- *7th Plenary Session of the ECCC.* On February 9, the *7th* Plenary Session of the ECCC concluded, having enacted a number of rule amendments designed to ensure effective and streamlined Civil Party participation in the proceedings. To date, approximately 4000 Civil Party applications have been received by the Victims Unit. It is clear that existing legal provisions in Cambodian criminal procedure are not designed to deal with individualized participation by victims on this scale. The number of Civil Party applicants, combined with the complexity, size and other unique features of ECCC proceedings, made it necessary to adopt a new system of victim representation during the trial and appeal stage. The new scheme as adopted is intended to balance the rights

of all parties, to safeguard the ability of the ECCC to achieve its mandate while maintaining Civil Party participation, and to enhance the quality of Civil Party representation. In addressing the broader interests of victims, the Plenary empowered the Victims Unit (renamed the Victims Support Section) to develop and implement new programs and measures occurring outside of formalized court proceedings. Such measures may encompass a broader range of services, as well as a more inclusive cross-section of victims than those who are admitted as Civil Parties in cases before the ECCC. The amended rules clarify that these measures may be developed in collaboration with governmental and non-governmental agencies external to the ECCC. This creates the possibility to develop more ambitious programs than would otherwise be achievable within the ECCC's existing capacities and resources. Other amendments adopted during the 7th Plenary Session are designed to streamline Civil Party representation within ECCC proceedings. The amended rules create two Civil Party Lead Co-Lawyers, who will bear ultimate responsibility for the overall advocacy, strategy and in-court presentation of the interests of the consolidated group of Civil Parties at the trial stage and beyond.

- *New Judges.* On February 23, following the nomination by the United Nations Secretary General Ban Ki-moon, and the approval by the Supreme Council of the Magistracy, His Majesty the King Norodom Sihamoni has appointed Ms. Catherine Marchi-Uhel (France) as new international judge to serve in the Pre-Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC). Judge Marchi-Uhel, who until this appointment was international reserve judge in the Supreme Court Chamber of the ECCC, replaces Judge Kathinka Lahuis (Netherlands). Judge Lahuis will now serve as international reserve judge of the Pre-Trial Chamber. Judge Florence Mumba (Zambia) has been appointed as new reserve judge to the Supreme Court Chamber of the ECCC.

- *Approval of ECCC budget for 2010-2011. On April 12, t*he approved budget for 2010 and 2011 has been released. It amounts to US$ 87.1 million in total, of which US$ 42.9 million for 2010 and US$ 44.2 million for 2011. The international component of the ECCC accounts for US$ 65.4 million, of which US$ 32.2 million for 2010 and US$ 33.2 million for 2011. The national component accounts for US$ 21.7 million, of which US$ 10.7 million for 2010 and US$ 11 million for 2011. All figures are exclusive contingency.

F) Special Tribunal for the Lebanon (STL)

News

- *New Chief of Investigation.* The Office of the Prosecutor´s Chief of Investigation, Mr. Naguib Kaldas, left the Special Tribunal at the end of his contract on February 28, to

resume his duties as Deputy Commissioner of the New South Wales Police, in Australia, his homeland.

- *New Registrar*. The STL Registrar, Mr. David Tolbert, resigned from the Tribunal to become President of the International Center for Transitional Justice, a leading global human rights organization based in New York. Mr. Tolbert's resignation took effect 1 March 2010. The UN Secretary-General appointed Herman von Hebel as Acting Registrar, effective from 1 March 2010. Mr. von Hebel has been Deputy Registrar at the Special Tribunal for Lebanon since 2009. He previously served as Registrar and Deputy Registrar of the Special Court of Sierra Leone. Before joining the Special Court, he served as Legal Advisor to the Dutch Ministry of Foreign Affairs (1991-2000) and as Senior Legal Officer in the Chambers of the International Tribunal for the former Yugoslavia (2001-2006).

- *Practice Directions.* On January 15, the President of the STL signed three Practice Directions regulating various procedural aspects of the work of the Tribunal and its proceedings. The *Practice Direction on Filings of Documents* before the STL addresses the specific requirements on how to submit filings during proceedings at the STL. The *Practice Direction on the Procedure for Taking Depositions under Rules 123 and 157 and for taking Witness Statements for Admission in Court under Rule 155* defines specific requirements to conduct depositions and to gather witness statements. The Annex to the Practice Direction provides a model statement form to assist investigators working for all parties when gathering statements henceforth. The *Practice Direction for Video-Conference Links* provides several practical arrangements necessary for deposition evidence or testimony to be taken or received via video-conference link in accordance with Rules 123 (D) and 124, as well as to enable an accused to participate in proceedings as envisioned in Rule 105. The Practice Directions were issued pursuant to Rule 32(E) of the Rules of Procedure and Evidence, which vests the President with the authority to issue Practice Directions that address and expand on detailed aspects of the Rules of Procedure and Evidence, after having consulted with the Registrar, the Head of Defence Office and the Prosecutor.

- *First Annual Report.* On March 1, the President of the STL, Antonio Cassese, submitted the first Tribunal's Annual Report to the UN Secretary-General and the Government of Lebanon. The Annual Report aims to illustrate the steps taken, the achievements made a well as the hurdles encountered during the STL's first year (March 2009-February 2010). Subject to the consent of the Secretary-General and the Government of Lebanon, the Annual Report will be made public in due course. In commenting on the first anniversary of the Tribunal, President Cassese stated "The aims of the Tribunal are to render justice, to provide truth and peace of mind for the victims as well as to contribute to reconciliation within Lebanese society. The Tribunal further intends to strengthen the culture of accountability. We aim at dispensing justice impartially, fairly and free from any political or ideological bias, in full respect for the

rights of defendants and victims." The President stressed that the STL is aware of the challenges it has to face. But the Tribunal - he added - is prepared to meet these challenges and successfully complete its mandate.

- *Courtroom for Special Tribunal for Lebanon to host Taylor Trial*. On May 17, the STL announced that it would host the Special Court for Sierra Leone's (SCSL) trial of former Liberian President Charles Taylor beginning 17 May 2010. The SCSL will be relocating from the International Criminal Court's (ICC) courtroom in The Hague. A Memorandum of Understanding was completed between the STL and the SCSL which made the move possible. Under the agreement, the SCSL will pay for all trial-related costs. The newly constructed courtroom was made available to the SCSL in the spirit of inter-tribunal cooperation. The work of the STL will continue to progress and will not be affected by the move.

3. Law of the sea

A) International Tribunal for the Law of the Sea (ITLOS) (www.itlos.org)

New 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*. On May 14, the Seabed Disputes Chamber of the Tribunal received its first Request to render an Advisory Opinion from the Council of the International Seabed Authority. The Council adopted Decision ISBA/16/C/13 on 6 May 2010 during the Authority's Sixteenth Session, in which, in accordance with article 191 of the United Nations Convention on the Law of the Sea, it decided to request the Seabed Disputes Chamber to render an advisory opinion on the following questions:

1. What are the legal responsibilities and obligations of States Parties to the Convention with respect to the sponsorship of activities in the Area in accordance with the Convention, in particular Part XI, and the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982?
2. What is the extent of liability of a State Party for any failure to comply with the provisions of the Convention, in particular Part XI, and the 1994 Agreement, by an entity whom it has sponsored under Article 153, paragraph 2 (b), of the Convention?
3. What are the necessary and appropriate measures that a sponsoring State must take in order to fulfil its responsibility under the Convention, in particular Article 139 and Annex III, and the 1994 Agreement?

The Request for an Advisory Opinion was transmitted by letter dated 11 May 2010, from the Secretary-General of the International Seabed Authority, Mr Nii Odunton, addressed to the President of the Seabed Disputes Chamber, Judge Tullio Treves. The Request was filed with the Registry on 14 May 2010. In accordance with article 191 of the Convention, the Assembly or Council of the International Seabed Authority may request the Seabed Disputes Chamber to give an advisory opinion on legal questions arising within the scope of their activities. This is the first advisory opinion that the Seabed Disputes Chamber has been called upon to render. The procedure, as contained in articles 130 to 137 of the Rules includes a written phase, in which States Parties to the Convention and relevant intergovernmental organizations may present statements, as well as the possibility of holding oral proceedings.

On May 18, the President of the Seabed Disputes Chamber, Judge Tullio Treves, adopted an Order deciding that the International Seabed Authority and those organizations invited as intergovernmental organizations to participate as observers in the Assembly of the Authority are considered likely to be able to furnish information on the questions submitted to the Seabed Disputes Chamber and invited them and the States Parties to the United Nations Convention on the Law of the Sea to present written statements on the questions contained in the Request, fixing 9 August 2010 as the time-limit for the presentation of such written statements. The President of the Seabed Disputes Chamber also fixed 14 September 2010 as the date for the opening of the hearing at which oral statements may be submitted to the Seabed Disputes Chamber by the States Parties to the Convention, the International Seabed Authority and the intergovernmental organizations referred to above. They are invited to indicate their intention to make oral statements at the hearing to the Registrar no later than 3 September 2010.

Pendant cases

- *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh v. Myanmar)*. By Order 2010/01 of 28 January 2010, the President of the ITLOS fixed the time-limits for the filing of Memorial and Counter-Memorial. During consultations held with the President of the Tribunal on 25 and 26 January 2010 on the premises of the Tribunal, the representatives of the parties agreed on the following order and time-limits for the filing of the written pleadings: 1 July 2010 as time-limit for the filing of the Memorial by Bangladesh, and 1 December 2010 as time-limit for the filing of the Counter-Memorial by Myanmar. They further agreed that, should the Tribunal find it necessary to authorize the presentation of reply and rejoinder, the time-limits for the filing of these pleadings should be as follows: 15 March 2011, time-limit for the filing of the Reply by Bangladesh, and 1 July 2011, time-limit for the filing of the Rejoinder by Myanmar.

On February 12, the President of the ITLOS appointed three arbitrators to serve as members of the Annex VII arbitral tribunal instituted for the settlement of this dispute. The arbitrators are Rüdiger Wolfrum (Germany), Tullio Treves (Italy) and Ivan Shearer (Australia). The President also appointed Rüdiger Wolfrum as the president of the arbitral tribunal. These appointments were made in consultation with the two parties to the dispute. In accordance with article 3 of Annex VII of the United Nations Convention on the Law of the Sea, if the parties are unable to reach an agreement on the appointment of one or more of the members of the tribunal to be appointed by agreement, or on the appointment of the president of the arbitral tribunal, these appointments shall be made by the President of the International Tribunal for the Law of the Sea at the request of a party to the dispute and in consultation with the parties. In a letter dated 13 December 2009, the Minister of Foreign Affairs of Bangladesh had requested the President of the Tribunal to appoint the three arbitrators, since the two parties were unable to reach an agreement thereon.

News

- *Death of former ITLOS Judge.* On April 26, Judge Paul Bamela Engo died in Yaoundé. Judge Bamela Engo was a Member of the Tribunal from 1996 until 2008. Before his election as a judge of the Tribunal, Judge Bamela Engo served his country in various international positions, including as Ambassador and Permanent Representative of Cameroon to the United Nations. He also played a major role as Chairman of the First Committee of the Third United Nations Conference on the Law of the Sea (1973 – 1982).
- *President´s Annual Report.* On June 14, the President of the Tribunal, Judge José Luis Jesus, addressed the Twentieth Meeting of States Parties to the United Nations Convention on the Law of the Sea, introducing therewith the Annual Report of the Tribunal. Welcoming the two new Parties to the Convention, the Dominican Republic and Chad, the President also noted that of the 160 States Parties, 43 had made a declaration concerning the procedure for the settlement of disputes relating to the interpretation or application of the Convention, of which 29 had selected the Tribunal as a means for the settlement of law of the sea disputes pursuant to article 287 of the Convention.

4. Political and economic cooperation

A) European Free Trade Association Court (EFTA Court) (www.eftacourt.lu)

Judgements

- *Judgment of 6 January 2010, Case E-1/09 EFTA Surveillance Authority* v *Principality of Liechtenstein*. The EFTA Court found that the Principality of Liechtenstein had failed to fulfil its obligations under Article 31 of the EEA Agreement, on freedom of

establishment. Firstly, Liechtenstein has introduced provisions of law according to which lawyers, patent lawyers, auditors and trustees must, by reason of their residence, be in a position to fulfil their tasks, actually and on a regular basis. Secondly, similar provisions require that the members of the management board and the executive management of banks must, by reason of their residence, be in a position to fulfil their functions and duties, actually and unobjectionably. These residence requirements, the Court found, entail restrictions on the freedom of establishment for members of the professions concerned who are nationals of other EEA States and for banks from other EEA States wishing to establish themselves in Liechtenstein. The Court further concluded that the restrictions were not justified by legitimate public interest objectives.

- *Judgment of 30 March 2010,* Case E-6/09 *Magasin- og Ukepresseforeningen* v *the EFTA Surveillance Authority).* In this case, the EFTA Court ruled on an application by the *Magasin- og Ukepresseforeningen*, an association of Norwegian magazine publishers, against the EFTA Surveillance Authority (ESA). The Applicant claimed that the Court should declare that ESA had failed to act by not properly pursuing a complaint that the Applicant had lodged in August 2006 concerning alleged State aid to newspapers. In its complaint to ESA, the Applicant claimed that the preferential VAT rates for newspapers in Norway constituted State aid. The Court found that the Application was inadmissable as the Applicant did not have *locus standi* to bring the action, neither on procedural nor on substantive grounds. In this respect, the Court held that the Applicant could not challenge the steps taken by ESA under the procedure for review of existing aid on the particular ground that a „party concerned might challenge a decision not to raise objections under Article 4(3) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (the "SCA"). This provision only applies to new aid. The Applicant also lacked *locus standi* on substantive grounds, as it had failed to demonstrate that the position on the market of at least some of its members was substantially affected by the aid granted.

Advisory Opinions

- *Advisory Opinion of 27 January 2010,* Case E-4/09 *Inconsult Anstalt* v *the Financial Market Authority (Finanzmarktaufsicht).* The EFTA Court gave an advisory opinion concerning a question referred to it by the Appeals Commission of the Financial Market Authority in Liechtenstein on the interpretation of Article 2(12) of Directive 2002/92/EC on insurance mediation. The question concerns what criteria have to be fulfilled in order for an Internet site to constitute a "durable medium" under the said Article. In the case before the Appeals Commission, Inconsult, a private entity incorporated under Liechtenstein law, contests an order issued by the Financial Market Authority of Liechtenstein, whereby the Authority requires Inconsult to comply with certain information obligations that apply to insurance intermediaries. Inconsult claims

that it has already fulfilled its obligations by operating a website containing the required information. According to Liechtenstein law, as well as Directive 2002/92/EC, the information has to be provided on paper or on any other "durable medium". The dispute relates to whether an Internet site can constitute such a medium. The provision in Liechtenstein law that defines the concept of a durable medium is an implementation of Article 2(12) of Directive 2002/92/EC, as incorporated in the EEA Agreement. The Court noted that for the purposes of consumer protection, the Directive sets out certain minimum obligations relating to the information which insurance intermediaries must provide to their customers and the manner in which this is done. By requiring this information to be submitted either on paper or any other durable medium, the Directive facilitates the subsequent verification of the information which an intermediary has provided to his customer. The Court held that an Internet site can constitute a durable medium under Article 2(12) of the Directive, provided that several criteria are met. Firstly, the Internet site must enable the customer to store the information in question. Secondly, the Internet site must enable the customer to store the information in a way which makes it accessible for a period of time adequate to the purposes of the information, that is, for as long as it is relevant for the customer in order to protect his interests stemming from his relations with the insurance intermediary. This might cover the time during which contractual negotiations were conducted even if not resulting in the conclusion of an insurance contract, the period during which an insurance contract is in force and, to the extent necessary e.g. for seeking redress, the period after such a contract has lapsed. Thirdly, the Internet site must allow for the unchanged reproduction of information stored. In this respect, the Court held that the information must be stored in a way that makes it impossible for the insurance intermediary to change it unilaterally. It is for the insurance intermediary to ensure that the methods of electronic communication he employs permit this kind of reproduction. Finally, the Court held that for an Internet site to qualify as a durable medium it is irrelevant whether the customer has expressly consented to the provision of information through the Internet.

5. Political and economic integration

A) The Tribunal of Justice of the Andean Community (TJAC) (www.tribunalandino.org)

Judgments

- *Judgment of 27 January 2010, case 5-AI-2008, General Secretary of the Andean Community v. Republic of Peru.* The TJAC concluded that the State had breached its obligations under Andean Community Law by creating and supporting the figure of "Agricultures-Importers-Users (AIU)", so such figure and all the licenses granted should be eliminated in 90 days. By Order of June 23, the Tribunal decided to open

procedure of contempt in order to determine whether the judgment was respected or not.

- *Judgment of 4 March 2010, Clara Inés Nieto Díaz v. General Secretary of the Andean Community, case 01-DL-2008.* The Tribunal rejected all the submissions of the requerant who pursued to be indemned due to the conclusion of its professional relationship with the General Secretary.

Supervision of judgments

- On June 23, the TJAC issued its Order in the *case 118-AI-2003 (supervision of judgment)*, declaring that the Republic of Colombia breached its obligations under Andean Community Law by contempt of judgment of 14 April 2005.

Prejudicial interpretations

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

New cases (excluding prejudicial intepretations)

- On February 2, *Alejandro Ponce Martínez and Carlos Manosalvas Silva* submitted a demand against the Republic of Ecuador under the consideration of an alleged breach of the Decision n. 458 and of the Andean Chart of Human Rigths (*case 01-AI-2010*).

- On February 10, the *Plurinational State of Bolivia* submitted a demand of nullity against the Decision n. 689 of the Andean Community Commission, dealing with the common regime of industrial proprierty (*case 01-AN-2010*).

- On April 27, the companies *BAYER S.A, BASF PERUANA S.A, PRODUCTOS QUIMICOS PERUANOS S.A., FARMEX S.A., ARIS INDUSTRIAL S.A., TECNOLOGIA QUIMICA Y COMERCIO S.A and SYNGENTA CROP, PROTECTION S.A* submitted a demand against the Republic of Peru, considering an alleged breach of the Andean Community Law dealing with the registry and control of chemical plaguicides for agricultural use (*case 02-AI-2010*).

- On May 26, the companie *Empresa de Telecomunciaciones de Colombia ETB* submitted a demand against the Republic of Colombia (*case 03-AI-2010*).

B) Centroamerican Court of Justice (CCJ) (www.ccj.org.ni)

(Due to problems related to access to CCJ website, it was impossible to complete this section)

II. INTERNATIONAL ARBITRAL TRIBUNALS

1. Permanent Court of Arbitration (PCA) (www.pca-cpa.org)

News

- *Annual Report*. At the beginning of 2010, the PCA presented its Annual Report of 2009. As remarkable highlights, the Report confirms 54 pending registry cases, 22 of them submitted in 2009, including: two state-state arbitrations, one –the first one- intra-state arbitration, thirty-three investor-state arbitrations under bilateral or multilateral (investment) treaties; sixteen arbitrations under contracts or other agreements to which at least one parte is a state, state-controlled entity, or intergobernmental organization; two cases under national investment laws; and two cases under the PCA Optional Rules for Arbitration of Disputes relating to Natural Resources and the Environment. Moreover, with the accession of Madagascar to the 1907 Convention, on October 7, 2009, the number of PCA member states increased to 110.

- *New Cooperation Agreement*. On May 24, 2010, the PCA signed a formal cooperation agreement with Australia's leading commercial arbitration body, the Australian Centre for International Commercial Arbitration (ACICA), in Rio de Janeiro, Brazil, in order to strengthen ties to promote the effective resolution of international disputes in the Asia Pacific region. The PCA and the ACICA will share advice and expertise, and will each open their facilities to access for hearings of the other party

- *Revision of UNCITRAL Rules*. The 2010 revisions to the 1976 UNCITRAL Rules reconfirm the PCA Secretary-General's mandate to designate an appointing authority. Under Articles 6 and 7 of the 1976 UNCITRAL Rules, for nearly thirty-five years the PCA has played a unique role among international institutions. These articles provide that if the parties cannot agree on an arbitrator or on an appointing authority, or if an agreed appointing authority fails to act, "either party may request the Secretary-General of the Permanent Court of Arbitration at The Hague to designate an appointing authority." In practice, the Secretary-General of the PCA has not only designated other institutions and individuals to act as appointing authorities, but has directly acted in the same capacity.

  Additionally, the Revised Rules entrust the appointing authority with responsibility for reviewing the determination of fees and expenses at the conclusion of a case. Article 40 requires the arbitral tribunal to fix the costs of the arbitration, including arbitrator

fees and expenses. However, Article 41(4) (b) permits any party to request review of this determination by the appointing authority.