

## International Courts

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This article summarizes selected international court developments and decisions during 2013.<sup>1</sup> This year's article focuses on the International Court of Justice (ICJ) and the Inter-American Court of Human Rights.

### I. International Court of Justice

#### A. COMPOSITION OF THE COURT

At the end of 2013, the ICJ President was Peter Tomka (Slovakia), and the Vice President was Bernardo Sepúlveda-Amor (Mexico).<sup>2</sup> The thirteen other judges were Hisashi Owada (Japan), Ronny Abraham (France), Kenneth Keith (New Zealand), Mohamed Benouna (Morocco), Leonid Skotnikov (Russian Federation), Antônio Augusto Cançado Trindade (Brazil), Abdulqawi Ahmed Yusuf (Somalia), Christopher Greenwood (United Kingdom of Great Britain and Northern Ireland), Xue Hanqin (China), Joan E. Donoghue (United States), Giorgio Gaja (Italy), Julia Sebutinde (Uganda), and Dalveer Bhandari (India).<sup>3</sup> The ICJ Registrar was Philippe Couvreur (Belgium), and the Deputy-Registrar was Jean-Pelé Fomété (Cameroon).<sup>4</sup>

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1. See generally Yabaslau Kryvol et al., *International Courts and Tribunals*, 47 INT'L LAW. 129 (2013) (survey of developments during 2012).

2. See Rep. of the Int'l Court of Justice [ICJ], Aug. 1, 2012-July 31, 2013, UN Doc A/68/4; GAOR, 68th Sess., Supp. No. 4, at ¶ 25 (2013) [hereinafter ICJ Report]. The composition of the International Court of Justice did not change from July 31, 2013, to December 31, 2013.

3. *Id.* Additionally, parties that have no judge of their nationality on the ICJ may choose an *ad hoc* judge to serve on the case that concerns them. Statute of the ICJ, art. 31, ¶ 3 (1946). During the period of August 2012 to July 2013, fourteen individuals were chosen to serve as *ad hoc* judges in various cases. See ICJ Report, *supra* note 2, ¶ 30. Individuals serving as *ad hoc* judges during this period were Joe Verhoeven, James L. Kateka, Budislav Vukas, Milenko Krecka, Mohammed Bedjaoui, Giorgio Gaja, Thomas A. Mensah, Yves L. Fortier, Jean-Pierre Cot, Gilbert Guillaume, Francisco Orrego Vicuña, Raúl Emilio Vineusa, Hilary Charlesworth, Yves Daudet, Ahmed Mahiou, John Dugard, and Bruno Simma. *Id.* ¶¶ 31–40 (some individuals sat as a judges *ad hoc* in more than one case).

4. See ICJ Report, *supra* note 2, ¶ 26.

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**II. Decisions in Contentious Cases**

A. THE ICJ DECIDED TWO CONTENTIOUS CASES DURING 2013<sup>5</sup>

1. *Frontier Dispute (Burkina Faso/Niger)*

Burkina Faso and the Niger were former French colonies in West Africa until they gained independence in 1960. Fifty years later, in July 2010, Burkina Faso and the Niger jointly asked the ICJ to determine the boundary between the two countries in a sector from the astronomic marker of Tong-Tong to the beginning of the Botou bend.<sup>6</sup> The parties agreed to accept the judgment of the ICJ as to the boundary and gave themselves eighteen months from the date of the ICJ's decision to start the work of demarcating the boundary.<sup>7</sup> They completed briefing and held public hearings in October 2012.<sup>8</sup> The ICJ, including two *ad hoc* judges appointed by the parties, issued a unanimous and rather technical decision in the frontier dispute on April 16, 2013, identifying the frontier between Burkina Faso and the Niger.<sup>9</sup> The ICJ named three experts in July 2013 to assist Burkina Faso and the Niger in the operation of the demarcation of their common frontier according to the decision of the court.<sup>10</sup> The nomination of experts thus completed the case before the ICJ.<sup>11</sup>

2. *Request for Interpretation of the 1962 Judgment in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand)*

ICJ Judgments have no binding force “except between the parties and in respect of that particular case.”<sup>12</sup> Judgments are “final and without appeal.”<sup>13</sup> But any party to a case may ask the ICJ to construe its judgment if there is any “dispute as to the meaning or scope of the judgment.”<sup>14</sup> In 2011, Cambodia asked the ICJ to interpret a judgment issued by the court in 1962 concerning the Temple of Preah Vihear.<sup>15</sup> In that 1962 judgment, the ICJ found that (1) the Temple of Preah Vihear was situated in territory under the sovereignty of Cambodia; (2) Thailand was under an obligation to withdraw any mili-

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5. See INT'L CT. OF JUST., [www.icj-cij.org](http://www.icj-cij.org) (last visited Mar. 3, 2014). Judgments and orders can be found at the ICJ's website.

6. ICJ Report, *supra* note 2, ¶ 165.

7. *Id.* ¶ 165.

8. *Id.* ¶¶ 166–67.

9. *Id.* ¶ 168. Although the judgment in the operative clause of the ICJ decision was unanimous, separate declarations or opinions were appended to the judgment by Judge Bennouna (Morocco), Judge Cançado Trindade (Brazil), Judge Yusuf (Somalia), and by *ad hoc* judges Mahiou and Daudet. *Id.*

10. Press Release, ICJ, Frontier Dispute (Burkina Faso/Niger): The Court Nominates Experts to Assist the Parties in the Demarcation of Their Frontier, 1 (July 22, 2013), *available at* <http://www.icj-cij.org/docket/files/149/17476.pdf>.

11. *Id.* (“[t]he case has thus been completed and has been removed from the Court's List”).

12. Statute of the ICJ, art. 59.

13. *Id.* art. 60.

14. *Id.*

15. See generally Temple of Preah Vihear (Cambodia v. Thai.), Merits, 1962 I.C.J. 6 (June 15), *available at* <http://www.icj-cij.org/docket/files/45/4871.pdf>.

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tary, police forces, guards, or keepers stationed near the Temple; and (3) Thailand had an obligation to restore any objects it had removed from the Temple or the Temple area.<sup>16</sup>

In its 2011 request for interpretation of the 1962 judgment, Cambodia identified three issues that required interpretation. First, there was a dispute as to whether a line depicted on the Annex I map of the 1962 judgment constituted the frontier between Cambodia and Thailand in the area of the Temple.<sup>17</sup> Second, there was a dispute as to the scope of the phrase “vicinity on Cambodian territory” mentioned in the second operative paragraph of the 1962 judgment.<sup>18</sup> And third, there was a dispute regarding the nature of Thailand’s obligation to withdraw military, police forces, guards, or keepers stationed near the Temple.<sup>19</sup>

On November 11, 2013, the ICJ, including *ad hoc* judges Guillaume and Cot, found unanimously that it had jurisdiction under article 60 of the ICJ Statute to hear Cambodia’s request for interpretation of the 1962 judgment.<sup>20</sup> As a methodology for interpreting its earlier judgment, the ICJ stated that written pleadings and the record of the oral proceedings in 1962 were relevant because it showed “what evidence was, or was not, before the Court and how the issues before it were formulated by each Party.”<sup>21</sup> The ICJ then declared unanimously that its 1962 judgment had recognized Cambodia’s sovereignty over not only the Temple building itself, but also the “whole territory of the promontory of Preah Vihear” and that consequently, “Thailand was under an obligation to withdraw from that territory the Thai military or police forces, or other guards or keepers, that were stationed there.”<sup>22</sup> The ICJ also noted that Thailand had accepted a general and continuing legal obligation to respect the integrity of territory found to be under the sovereignty of Cambodia.<sup>23</sup>

C. ORDERS IN OTHER CASES

In addition to the two judgments, the ICJ also issued twelve orders during 2013 in various pending cases.

1. *Intervention for New Zealand: Whaling in the Antarctic (Australia v. Japan)*

Australia instituted proceedings against Japan in 2010, alleging that Japan’s “Whale Research Program” breached the International Convention for the Regulation of Whaling and its obligations to preserve marine animals and the marine environment.<sup>24</sup> In November 2012, New Zealand asked to intervene in the case because it was also a party to the

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16. *Id.* at 36–37.

17. See Press Release, ICJ, Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), 2 (Nov. 11, 2013) [hereinafter Press Release, Request for Interpretation], available at <http://www.icj-cij.org/docket/files/151/17704.pdf>.

18. *Id.*

19. *Id.*

20. *Id.* at 1.

21. *Id.* at 3.

22. *Id.* at 1.

23. *Id.* at 3. Judges Owada (Japan), Bennouna (Morocco), and Gaja (Italy) appended a joint declaration to the judgment; Judge Cañado Trindade appended a separate opinion; and *ad hoc* Judges Guillaume and Cot appended their own declarations to the judgment. See *id.* at 4.

24. ICJ Report, *supra* note 2, ¶¶ 150–51.

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International Convention for the Regulation of Whaling.<sup>25</sup> Japan expressed concerns that allowing New Zealand to intervene would affect the equality of the parties.<sup>26</sup> But in an order entered on February 6, 2013, the ICJ unanimously allowed New Zealand to intervene.<sup>27</sup>

Although agreeing to allow New Zealand to intervene, Judge Owada of Japan filed a separate declaration to express his “serious reservation about the formalistic approach” used to decide the issue of intervention “without giving sufficient reflection on an important aspect of the principle of equality of the Parties, which forms an essential cornerstone of the fair administration of justice.”<sup>28</sup> Judge Cançado Trindade of Brazil also concurred but filed a ten-part separate opinion to discuss differences between discretionary intervention (under article 62 of the ICJ Statute) and intervention as of right (under article 63 of the ICJ Statute). Judge Cançado Trindade concluded that intervention in proceedings before the ICJ would provide “a valuable service towards a more cohesive international legal order” and that “by providing additional elements to the Court for its consideration and reasoning, [intervention in legal proceedings] can contribute to the progressive development of international law itself, especially when matters of collective or common interest and collective guarantee are at stake.”<sup>29</sup> Finally, Judge Gaja of Italy also filed a declaration stating that the ICJ should have considered the relevance of New Zealand’s suggested interpretation of the International Convention for the Regulation.<sup>30</sup>

Public hearings were held on the merits of the case in June and July 2013. The ICJ is expected to rule on the legality of Japan’s whaling program in 2014.

2. *Cases Joined: Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica Along the San Juan River (Nicaragua v. Costa Rica)*

In 2010, Costa Rica instituted proceedings against Nicaragua alleging occupation and use of Costa Rican territory by the Nicaraguan army and breaches of Nicaragua’s obligations to Costa Rica under a number of international treaties and conventions.<sup>31</sup> Costa Rica alleged that Nicaragua twice occupied Costa Rican territory and began dredging

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25. *Id.* ¶ 155.

26. *Id.* ¶ 161.

27. *Id.*; see also Press Release, ICJ, Whaling in the Antarctic (Australia v. Japan): The Court Authorizes New Zealand to Intervene in the Proceedings, 1 (Feb. 13, 2013), available at <http://www.icj-cij.org/docket/files/148/17266.pdf>; see also Whaling in the Antarctic (Austl. v. Japan), Order on the Declaration of Intervention of New Zealand, 8 (Feb. 6, 2013), available at <http://www.icj-cij.org/docket/files/148/17268.pdf>.

28. Whaling in the Antarctic, Order on the Declaration of Intervention of New Zealand (Austl. v. Japan; N.Z. intervening), Declaration of Judge Owada, ¶ 6 (Feb. 6, 2013), available at <http://www.icj-cij.org/docket/files/148/17270.pdf>.

29. Whaling in the Antarctic Order on the Declaration of Intervention of New Zealand (Austl. v. Japan; N.Z. intervening), Separate Opinion of Judge Cançado Trindade, ¶ 76, available at <http://www.icj-cij.org/docket/files/148/17272.pdf>.

30. Whaling in the Antarctic, Order on the Declaration of Intervention of New Zealand (Austl. v. Japan; N.Z. intervening), Separate Declaration of Judge Gaja, 1, available at <http://www.icj-cij.org/docket/files/148/17274.pdf>.

31. See generally *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.)*, Application Institution Proceedings (Nov. 18, 2010), available at <http://www.icj-cij.org/docket/files/150/16279.pdf>.

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operations on the San Juan River and construction of a canal that will seriously damage wetlands and wildlife in Costa Rica.<sup>32</sup> Costa Rica also filed a request for the indication of provisional measures, which the ICJ ordered in 2011.<sup>33</sup>

Nicaragua filed a counterclaim in 2011, asking for declaration that Costa Rica bore responsibility to Nicaragua because Costa Rica was constructing a road that could impair or possibly destroy navigation on the San Juan River.<sup>34</sup> In addition, Nicaragua filed its own case against Costa Rica on December 22, 2011.<sup>35</sup> Nicaragua claimed that construction of the road resulted in dumping substantial volumes of sediments into the river as well as posing dangers to water quality, aquatic life, and rare and diverse flora and fauna.<sup>36</sup>

The ICJ joined the two cases on April 17, 2013.<sup>37</sup> Throughout the rest of 2013, Nicaragua and Costa Rica filed various requests to modify earlier measures or to indicate new provisional measures. In an order issued in July 2013, the ICJ reaffirmed the provisional measures it had indicated in 2011, and “in particular the requirement that the Parties ‘shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.’”<sup>38</sup> And in an order issued in November 2013, the ICJ ordered Nicaragua to refrain from any further dredging in the disputed territory and to fill a trench within two weeks.<sup>39</sup> Briefing continues on the merits of the case.

3. *Removal of a Case from the Docket: Aerial Herbicide Spraying (Ecuador v. Colombia)*

In 2008 Ecuador brought proceedings against Colombia, seeking a declaration that aerial spraying by Colombia of toxic herbicides was seriously damaging human health, property, and the environment.<sup>40</sup> Colombia was allegedly using toxic herbicides as part of its plan to eradicate illicit coca and poppy plantations.<sup>41</sup>

The case was set for oral argument at the end of September 2013.<sup>42</sup> But before the case was argued, Ecuador and Colombia reached a negotiated settlement that resulted in hav-

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32. *Id.* ¶¶ 5–6, 26.

33. ICJ Report, *supra* note 2, ¶¶ 175–77.

34. *Id.* ¶ 179.

35. See generally Construction of a Road in Costa Rica Along the San Juan River (Nicar. v. Costa Rica), Application Instituting Proceedings (Dec. 22, 2011), available at <http://www.icj-cij.org/docket/files/152/16917.pdf>.

36. *Id.* ¶¶ 5–6.

37. ICJ Report, *supra* note 2, ¶ 180. The ICJ emphasized that it had joined the cases “in conformity with the principle of the sound administration of justice and with the need for judicial economy.” *Id.*

38. Construction of a Road in Costa Rica Along the San Juan River (Nicar. v. Costa Rica) and Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.), Order on the Requests for the Modification of the Order of 8 March 2011 Indicating Provisional Measures, ¶ 40 (July 16, 2013), available at <http://www.icj-cij.org/docket/files/150/17500.pdf>.

39. Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicar.) and Construction of a Road in Costa Rica Along the San Juan River (Nicar. v. Costa Rica), Order on the Request Presented by Costa Rica for the Indication of New Provisional Measures, ¶ 59 (Nov. 22, 2013), available at <http://www.icj-cij.org/docket/files/150/17772.pdf>.

40. ICJ Report, *supra* note 2, ¶¶ 141–43.

41. *Id.* ¶ 145.

42. *Id.* ¶ 149.

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ing the case removed from the ICJ docket on September 13, 2013.<sup>43</sup> As part of the settlement, the countries agreed to create (1) “an exclusion zone in which Colombia [would] not conduct aerial spraying,” (2) “a Joint Commission to ensure that spraying operations outside [the exclusion] zone [did] not cause[ ] herbicides to drift into Ecuador;” and (3) a dispute settlement mechanism.<sup>44</sup>

D. FOUR NEW CASES FILED IN 2013

1. *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*

The Plurinational State of Bolivia is a landlocked country, with no sovereign access to the sea. In April 2013, Bolivia instituted proceedings against the Republic of Chile, alleging that Chile had breached its “obligation to negotiate in good faith and effectively with Bolivia in order to reach an agreement granting Bolivia a fully sovereign access to the Pacific Ocean.”<sup>45</sup> Basing its claim on facts starting from the independence of Bolivia in 1825, Bolivia alleged that Chile has committed itself, “through agreements, diplomatic practice and a series of declarations attributable to its highest-level representatives, to negotiate a sovereign access to the sea for Bolivia.”<sup>46</sup> The ICJ fixed a briefing schedule in which Bolivia’s Memorial will be due in 2014, and Chile’s Counter-Memorial will be due in 2015.<sup>47</sup>

2. *Delimitation of the Continental Shelf Between Nicaragua and Colombia Beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*

In 2012, the ICJ decided a case between Nicaragua and Colombia that delimited the boundaries of Nicaragua’s continental shelf and exclusive economic zone within 200 miles of the Nicaraguan coast.<sup>48</sup> In September 2013, Nicaragua instituted proceedings against Colombia to fix the delimitation of the continental shelf between Nicaragua and Colombia in the area beyond 200 nautical miles from the Nicaraguan coast.<sup>49</sup> Nicaragua asked the ICJ to,

- (1) determine the precise course of the boundary of the continental shelf between Nicaragua and Colombia in accordance with the principles and rules of international law, and
- (2) indicate the rights and duties of the two States in relation to the area of overlapping claims and the use of its resources pending the precise delimitation of the line of the boundary.<sup>50</sup>

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43. Press Release, ICJ, Aerial Herbicide Spraying (Ecuador v. Colombia): Case Removed from the Court’s List at the Request of the Republic of Ecuador, 1 (Sept. 17, 2013), *available at*, <http://www.icj-cij.org/docket/files/138/17526.pdf>.

44. *Id.*

45. ICJ Report, *supra* note 2, ¶ 217.

46. *Id.* ¶ 220.

47. *Id.* ¶ 224.

48. Territorial and Maritime Dispute (Nicar. v. Colom.), 2012 I.C.J. 624, ¶¶ 136, 251 (Nov. 19), *available at* <http://www.icj-cij.org/docket/files/124/17164.pdf>.

49. Letter from Embassy of Nicaragua, The Hague, Application of the Republic of Nicaragua Instituting Proceedings Against the Republic of Colombia, 1 (Sept. 16, 2013), *available at* <http://www.icj-cij.org/docket/files/154/17532.pdf>.

50. *Id.*

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The ICJ set a briefing schedule in which Nicaragua's Memorial will be due at the end of 2014, and Colombia's Counter-Memorial will be due at the end of 2015.<sup>51</sup>

3. *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea*  
(*Nicaragua v. Colombia*)

In November 2012, the ICJ decided a territorial and maritime dispute between Nicaragua and Colombia.<sup>52</sup> But just one year later, in November 2013, Nicaragua instituted new proceedings against Colombia alleging violations of Nicaragua's sovereign rights and maritime zones that the ICJ had declared in that 2012 judgment.<sup>53</sup> Colombian officials had allegedly rejected the ICJ's judgment and treated it as being "not applicable."<sup>54</sup> Instead of respecting the 2012 judgment, the President of Colombia allegedly declared an "Integral Contiguous Zone" in which it would "exercise jurisdiction and control over all areas related to security and the struggle against delinquency, and over fiscal, customs, environmental, immigration and health matters and other areas as well."<sup>55</sup>

In its application to the ICJ filed in November 2013, Nicaragua alleged that (1) Colombia violated its obligation under article 2(4) of the United Nations Charter and customary international law not to use or threaten to use force, (2) Colombia violated Nicaragua's sovereign rights and jurisdiction in the maritime zones as identified in paragraph 251 of the ICJ's Judgment of November 2012, (3) Colombia violated Nicaragua's rights under customary international law as reflected in Parts V and VI of the U.N. Convention on the Law of the Sea, and (4) Colombia had an obligation to comply with the ICJ's 2012 judgment and to make full reparation for the harm caused by its internationally wrongful acts.<sup>56</sup>

4. *Seizure and Detention of Certain Documents and Data* (*Timor-Leste v. Australia*)

On December 3, 2013, officers of the Australian Security Intelligence Organization, "allegedly acting under a warrant issued by the Attorney-General of Australia," went to the office/residence of a legal advisor in Canberra.<sup>57</sup> Among items they seized were documents and data containing correspondence between the Government of Timor-Leste and its legal advisor relating to a pending international arbitration under the 2002 Timor Sea Treaty between Timor-Leste and Australia.<sup>58</sup> Two weeks after that raid, Timor-Leste in-

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51. Question of the Delimitation of the Continental Shelf Between Nicaragua and Colombia Beyond 200 Nautical Miles from the Nicaraguan Coast (Nicar. v. Colom.), Order, 2013 I.C.J.154, 2 (Dec. 9), available at <http://www.icj-cij.org/docket/files/154/17916.pdf>.

52. See generally Territorial and Maritime Dispute (Nicar. v. Colom.), 2012 I.C.J. 624 (Nov. 19), available at <http://www.icj-cij.org/docket/files/124/17164.pdf>.

53. Press Release, ICJ, Nicaragua Institutes Proceedings Against Colombia with Regard to Alleged Violations of Nicaragua's Sovereign Rights and Maritime Zones Declared by the Court's Judgment of 19 November 2012, 1 (Nov. 27, 2013), available at <http://www.icj-cij.org/docket/files/155/17806.pdf>.

54. *Id.*

55. *Id.* at 1-2.

56. *Id.* at 1.

57. Press Release, ICJ, Timor-Leste Institutes Proceedings Against Australia and Requests the Court to Indicate Provisional Measures, 1 (Dec. 18, 2013), available at <http://www.icj-cij.org/docket/files/156/17844.pdf>.

58. *Id.*

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stituted proceedings against Australia and asked the ICJ to indicate provisional measures.<sup>59</sup>

Timor-Leste asked the ICJ to find that Australia's seizure and continued detention of the documents and data violated "the sovereignty of Timor-Leste" and "its property and other rights under international law and any relevant domestic law."<sup>60</sup> Timor-Leste asked the ICJ to order Australia to "immediately return" all of the documents and data to Timor-Leste and to ensure destruction of any copies Australia may have made or passed to any third person or third country.<sup>61</sup> Timor-Leste also asked the ICJ to order Australia to apologize for the seizure and to pay costs incurred by Timor-Leste in presenting its application to the ICJ.<sup>62</sup>

On December 17, 2013, Timor-Leste filed a request for the indication of provisional measures asking the ICJ to indicate (1) that all documents and data seized by Australia "be immediately sealed and delivered into the custody of the [ICJ]"; (2) that Australia immediately give Timor-Leste and the ICJ a list of documents and data it disclosed or transmitted to any person, "whether or not such person [was] employed by or holds office" in Australia or any third state; (3) that within five days, Australia deliver "a list of any and all copies that it has made of any of the seized documents or data"; (4) that Australia "destroy beyond recovery" any copies made and "use every effort" to ensure destruction of any copies transmitted to others; and (5) that Australia assure that it would not interrupt any communications between Timor-Leste and its legal advisors.<sup>63</sup>

On the following day, ICJ President Peter Tomka sent an urgent communication to the Prime Minister of Australia asking the Commonwealth of Australia "to refrain from any act which might cause prejudice to the rights claimed by the Democratic Republic of Timor-Leste in the present proceedings."<sup>64</sup> The ICJ also fixed hearings in January 2014 on Timor-Leste's request for an indication of preliminary measures against Australia.<sup>65</sup>

5. *Advisory Opinions*

The ICJ received no new requests for Advisory Opinions during 2013.<sup>66</sup>

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59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.* at 2.

64. Press Release, ICJ, Proceedings Instituted by Timor-Leste Against Australia, Urgent Communication to Australia from the President Under Article 74, Paragraph 4, of the Rules of Court, 1 (Dec. 20, 2013), available at <http://www.icj-cij.org/docket/files/156/17846.pdf>.

65. Press Release, ICJ, Proceedings Instituted by Timor-Leste Against Australia, Request for the Indication of Preliminary Measures: The Court to Hold Public Hearings from Monday 20 to Wednesday 22 January 2014, 1 (Dec. 23, 2013), available at <http://www.icj-cij.org/docket/files/156/17850.pdf>. At the conclusion of those hearings in January 2014, the ICJ rejected Australia's request to stay the ICJ proceedings pending the outcome of the international arbitration and instead set a briefing schedule for further proceedings. See Questions Relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Austl.), Order, 2-3 (Jan. 28, 2014), available at <http://www.icj-cij.org/docket/files/156/17990.pdf>.

66. Under Article 96 of the United Nations Charter, the ICJ is authorized to give advisory opinions to the U.N. General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the Interim Committee of the General Assembly, and other organizations authorized to request advisory opinions. See Report of the International Court of Justice, Aug. 1, 2012-July 31, 2013, U.N. Doc. A/68/4, GAOR 68th Sess., Supp. No. 4, at 10 ¶ 52 (2013). Those other organizations are (1) the International Labor



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E. RENOVATION OF THE PEACE PALACE

The Carnegie Foundation, which owns the Peace Palace where the ICJ is housed, completed renovation of the Great Hall of Justice (the ICJ's courtroom) in 2013.<sup>67</sup> The ICJ has held its public hearings in the refurbished courtroom since April 2013.<sup>68</sup>

**II. Inter-American Court of Human Rights**

This section reviews contentious cases and other developments before the Inter-American Court of Human Rights during 2013.

A. CONTENTIOUS CASES

1. *Mendoza v. Argentina*

In *Mendoza v. Argentina*, five petitioners alleged that Argentina violated their human rights by imposing life sentences on persons who were under the age of eighteen when the underlying crimes were committed.<sup>69</sup> In its judgment of May 14, 2013, the Inter-American Court determined that Argentina had violated articles 5 (right to humane treatment), 7 (right to personal liberty), and 19 (rights of the child) of the American Convention on Human Rights (American Convention) because imposing life sentences on juveniles constituted cruel and inhuman treatment or punishment.<sup>70</sup> It also found that a lack of adequate medical treatment for one petitioner violated articles 5 and 19 of the American Convention.<sup>71</sup> The court further found that two of the juveniles had been beaten with sticks while in prison, in a practice known as *falanga*, and that these beatings constituted torture in violation of the American Convention.<sup>72</sup>

In addition to the findings on the sentences and the treatment of the juveniles while in custody, the court also addressed the lack of investigation into this torture as well as the lack of investigation into the death of Ricardo David Videla, who was found hanging in his prison cell.<sup>73</sup> The court affirmed that individuals have a right to effective judicial remedies pursuant to articles 8 (right to a fair trial) and 25 (right to judicial protection) of the

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Organization; (2) the U.N. Food and Agriculture Organization; (3) the U.N. Educational, Scientific, and Cultural Organization; (4) the International Civil Aviation Organization; (5) the World Health Organization; (6) the World Bank; (7) the International Finance Corporation; (8) the International Development Association; (9) the International Monetary Fund; (10) the International Telecommunications Union; (11) the World Meteorological Organization; (12) the International Maritime Organization; (13) the World Intellectual Property Organization; (14) the International Fund for Agricultural Development; the U.N. Industrial Development Organization; and (15) the International Atomic Energy Agency. *Id.*

67. *Id.* ¶ 20.

68. *Id.*

69. *Mendoza v. Argentina*, Preliminary Objections, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 260, ¶¶ 164, 167 (May 14, 2013), available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_260\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_260_ing.pdf).

70. Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

71. *Mendoza v. Argentina*, Inter-Am. Ct. H.R. (ser. C) No. 260 at ¶ 195.

72. *Id.* ¶¶ 197, 211.

73. *Id.* ¶ 216.

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American Convention.<sup>74</sup> The court found that Argentina failed to conduct a proper investigation into Mr. Videla's death, thus violating these articles of the Convention.<sup>75</sup> Likewise, the court found that Argentina violated these same articles in failing to investigate allegations of torture, in addition to violating its obligations under the Inter-American Convention to Prevent and Punish Torture.<sup>76</sup> Finally, the court found that Argentina failed to provide petitioners with a proper right to appeal the judgment in violation of articles 8 and 19 of the American Convention.<sup>77</sup>

Separately, the court found that Argentina violated the human rights of the victims' next of kin who suffered due to how their young family members were treated. The stress caused by the human right violations of their family members' led to family disintegration and adverse physical effects. The court held that Argentina's actions violated the families' personal integrity in violation of article 5(1) of the American Convention.<sup>78</sup> It also held that Argentina failed to adapt its domestic law to its obligations under the American Convention in violation of article 2 (domestic legal effects).<sup>79</sup>

By way of remedy, the court held that the state should provide (1) medical treatment to the victims, (2) education and training to personnel in the Argentinian prison system, (3) satisfaction in the form of publication and dissemination of the court's judgment, and (4) review of the cases of any other minors who may be serving a life sentence. Argentina was also ordered to amend its domestic laws to ensure they comply with the American Convention.<sup>80</sup> The state was also ordered to (1) investigate the responsibilities of the personnel at the Mendoza prison where David Videla died, (2) investigate the torture suffered by other victims, and (3) impose appropriate sanctions for anyone who contributed to this death or torture.<sup>81</sup> Finally, the court further ordered the payment of U.S. \$1,000 to each family member of the victim as a pecuniary damage as well as the payment of non-pecuniary damages to compensate the victims' families for their anguish.<sup>82</sup>

2. *Suárez Peralta v. Ecuador*

The Inter-American Court held that Ecuador failed to provide proper judicial guarantees and protection in a criminal investigation of a medical procedure involving Melba del Carmen Suárez Peralta.<sup>83</sup> In July 2000, Ms. Peralta underwent an operation for appendicitis in the Minchala private clinic.<sup>84</sup> Ms. Suárez suffered complications from the surgery,

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74. *Id.* ¶ 217.

75. *Id.* ¶ 227.

76. *Id.* ¶ 236. See also Inter-American Convention to Prevent and Punish Torture, Dec. 9, 1985, O.A.S.T.S. No. 67, 25 I.L.M. 519.

77. *Mendoza v. Argentina*, Preliminary Objections, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 260, ¶¶ 261, 167 (May 14, 2013), available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_260\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_260_ing.pdf).

78. *Id.* ¶ 289.

79. *Id.* ¶ 298.

80. *Id.* ¶ 332.

81. *Id.* ¶ 340.

82. *Id.* ¶¶ 349, 354.

83. *Suárez Peralta v. Ecuador*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 261, ¶ 103 (May 21, 2013), available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_261\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_261_ing.pdf).

84. *Id.* ¶ 41.

which led to additional medical procedures and ultimately resulted in severe and permanent afflictions and other hardships.<sup>85</sup> Ms. Suárez's mother filed a complaint against the supervising doctor, which led to the initiation of criminal proceedings against the doctor.<sup>86</sup> Those proceedings concluded in 2005 without any result. Failing to receive an adequate response from the state, in 2006, Ms. Suarez's family brought her claim to the Inter-American Commission on Human Rights, alleging that Ecuador had failed to investigate and prosecute with due diligence, in violation of the right to a fair trial and judicial protection under articles 8 and 25 of the American Convention.<sup>87</sup> After investigation, the Commission found that the lack of diligence, on the part of both the prosecutor and the judge in charge of the case, violated the victim's rights as alleged.<sup>88</sup> When Ecuador failed to comply with the measures recommended by the Commission, the Commission referred the matter to the court.<sup>89</sup>

The court agreed that

the errors, delays and omissions in the criminal investigation reveal that the State authorities did not act with due diligence or in keeping with the obligations to investigate and to ensure effective judicial protection within a reasonable time, in order to guarantee to Melba Suárez Peralta a reparation enabling her to have access to the medical treatment required by her health problems.<sup>90</sup>

The court consequently found that Ecuador violated articles 8(1) and 25(1) of the American Convention to the detriment of Melba Suárez Peralta and her mother.<sup>91</sup> The court also held that Ecuador failed to supervise and control the medical care provided by the clinic and was, thus, responsible for the violation of the obligation to guarantee the right to personal integrity, recognized in article 5(1) of the American Convention.<sup>92</sup> By way of remedy, the court ordered Ecuador to publish its judgment and compensate the victim and her family for pecuniary and non-pecuniary damages as well as costs and expenses.<sup>93</sup>

### 3. *Mémoli v. Argentina*

The main issue in *Mémoli v. Argentina* involved an alleged violation of the right to freedom of expression of Carlos and Pablo Carlos Mémoli, resulting from their criminal conviction for publicly denouncing the "supposedly irregular sale of burial niches in the local cemetery by the executive officers of a mutual association of the town of San Andrés

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85. *Id.* ¶¶ 44–45.

86. *Id.* ¶ 46.

87. *Id.* ¶ 2.

88. *Id.*

89. Suárez Peralta v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 261, ¶ 2 (May 21, 2013), available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_261\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_261_ing.pdf).

90. *Id.* ¶ 122.

91. *Id.*

92. *Id.* ¶ 154.

93. *Id.* ¶ 229.

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de Giles.<sup>94</sup> The Inter-American Commission submitted the case to the court on December 3, 2011, after finding that Argentina had violated the victims' rights of free expression under article 13 of the American Convention and their right to a fair trial under article 8.<sup>95</sup>

The Mémolis had become involved in a dispute with the Italian Association, which ultimately resulted in the Mémolis initiating legal action against the Association and two members of its management committee, alleging fraudulent transactions in connection with the sale of burial plots.<sup>96</sup> The individual defendants, in turn, filed suit against the Mémolis, alleging libel and defamation.<sup>97</sup> The Argentinian courts held that the Mémolis were guilty of libel and defamation due to statements they made on the radio and in newspaper articles relating to the matter.<sup>98</sup>

After a lengthy examination of the facts and previous legal proceedings, the court stated that it had to determine whether Argentina acted consistently with the American Convention when resolving a conflict between private citizens involving a conflict between the right of freedom of expression under article 13 of the American Convention and the protection of honor and reputation under article 11.<sup>99</sup> The court found that the Mémolis' criminal convictions complied with the requirements of article 13 because the convictions were "based on a norm established in the Argentine legal system designed to protect a legitimate objective compatible with the [American] Convention: the protection of the honor and reputation of others."<sup>100</sup> The court stated that it does not sit as a court of appeal in relation to domestic courts, but that it "must verify whether the State authorities made a reasonable and sufficient weighing up between the two rights in conflict, without necessarily making an autonomous and independent weighing, unless the specific circumstances of the case require this."<sup>101</sup>

Upon review, the majority of the court held that the Argentinian judicial authorities did not act in a manifestly excessive or disproportionate manner in their handling of the Mémolis' case.<sup>102</sup> Thus, the court found no violation of the Mémolis' right to freedom of expression.<sup>103</sup> But the court also held that Argentina failed to resolve the civil proceedings in a reasonably timely manner.<sup>104</sup> Accordingly, the court ordered Argentina to revise its legal system to ensure more prompt handling in the future, and it ordered the state to pay

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94. *Mémoli v. Argentina*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (sec. C) No. 265, ¶ 1 (Aug. 22, 2013), available at <http://www.corteidh.or.cr/index.php/en/decisions-and-judgments>.

95. *Id.* ¶ 2.

96. *Id.* ¶¶ 68–69.

97. *Id.* ¶ 74.

98. *Id.* ¶¶ 75–84, 88.

99. *Id.* ¶ 118.

100. *Id.* ¶ 134, 139.

101. *Id.* ¶ 140.

102. *Id.* ¶ 149. See also *id.* ¶ 233 (showing that three judges dissented from the majority's holding that the Mémolis' right of freedom had not been violated).

103. *Id.* ¶ 149.

104. *Id.* ¶ 206.

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U.S. \$15,000 to each Mémoli to compensate them for the length and expense of the legal proceedings.<sup>105</sup>

4. *García Lucero v. Chile*

The Inter-American Commission submitted *García Lucero v. Chile* to the court, in September 2011, to obtain a judgment with respect to Chile's alleged international responsibility for failure to investigate and make reparations for various acts of torture perpetrated against the victim, Leopoldo García Lucero.<sup>106</sup> Mr. García had been arrested in September 1973, shortly after the Pinochet regime came to power through a military coup in Chile.<sup>107</sup> He was tortured and imprisoned for almost two years and he was then exiled from the country in June 1975.<sup>108</sup> Mr. García has lived in the United Kingdom since 1975.<sup>109</sup> The Commission asked the court to declare that Mr. García's right of judicial guarantees and protection, right to humane treatment, and right to reparations under articles 1, 2, 5, 8, and 25 of the American Convention had been violated.<sup>110</sup>

Beginning in 1990, Chile adopted several laws and established several bodies to examine the state's responsibility for disappearances, tortures, and deaths from 1973 to 1990 and to consider how to bring about reconciliation.<sup>111</sup> The first such body, the Truth and Reconciliation Commission (also known as the Rettig Commission), investigated gross human rights violations during the relevant period and established measures of reparation.<sup>112</sup> The state then established the National Compensation and Reconciliation Board to continue to carry out the work of the Rettig Commission.<sup>113</sup> In 2003, the state created the National Commission on Political Imprisonment and Torture (also known as the Valech Commission).<sup>114</sup> The Valech Commission created a list of names of 27,153 persons who were subject to imprisonment and torture for political reasons, including Mr. García.<sup>115</sup> As a result, Mr. García has received, and continues to receive, monetary compensation from the state.<sup>116</sup> But because he lives in the United Kingdom, Mr. García did not receive medical care provided by Chile<sup>117</sup> for victims of the Pinochet regime.<sup>118</sup>

In 2011 and 2012, Mr. García's lawyer filed civil and criminal complaints in Chilean courts requesting an investigation and punishment of the perpetrators responsible for the

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105. Mémoli v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 265, ¶¶ 206, 221 (Aug. 22, 2013), *available at* <http://www.corteidh.or.cr/index.php/en/decisions-and-judgments>.

106. *García Lucero v. Chile*, Preliminary Objection, Merits, and Reparations, Inter-Am. Ct. H.R. (ser. C) No. 267, ¶¶ 1–2, *available at* [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_267\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_267_ing.pdf).

107. *Id.* ¶¶ 63–64.

108. *Id.*

109. *Id.*

110. *Id.* ¶ 3.

111. *Id.* ¶ 66.

112. *Id.* ¶ 66.

113. *Id.* ¶ 67.

114. *Id.* ¶ 72.

115. *Id.*

116. *Id.* ¶ 76.

117. *Id.* ¶ 165.

118. *Id.* ¶ 68.

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human rights violations suffered by Mr. García.<sup>119</sup> Those proceedings were ongoing at the time the Inter-American Court rendered its judgment in this case.<sup>120</sup>

The Inter-American Court stated that, pursuant to articles 8 and 25 of the American Convention, victims of human rights violations must have effective judicial remedies in accordance with due process of law.<sup>121</sup> In addition, in conjunction with the American Convention against Torture, states have an obligation to investigate and punish torture.<sup>122</sup> Chile became aware of Mr. García's case in 1993 when he wrote to request a pension as a person who was exiled for political reasons.<sup>123</sup> Thus, Chile's obligation to investigate the facts arose at that time.<sup>124</sup> Chile's failure to open an investigation until 2011, sixteen years later, constituted a breach of the state's obligation to immediately investigate the allegations.<sup>125</sup> For these reasons, the court held that Chile had violated Mr. García's rights under articles 8 and 25 of the American Convention.<sup>126</sup> But the court further held that Chile had not violated the American Convention through its conduct in the ongoing investigation.<sup>127</sup>

The Inter-American Commission also argued that Chile's amnesty legislation is incompatible with the American Convention and obstructs Mr. García's access to justice.<sup>128</sup> In this regard, the court held that it had not been proven that Chile's domestic laws impeded the investigation of Mr. García's case.<sup>129</sup>

With respect to reparations, the court noted that Mr. García was receiving a pension from the state; however, he was unable to take advantage of the educational and physical rehabilitation benefits available to other victims living in Chile.<sup>130</sup> But the court declined to order remedies because Mr. García had not previously filed a domestic proceeding requesting these additional forms of reparation.<sup>131</sup> The court held that Chile has an obligation to conclude its investigation of the persons responsible for violating Mr. García's rights within a reasonable time and to keep him informed of the progress.<sup>132</sup> In keeping with its usual practice, the court ordered Chile to publish its judgment.<sup>133</sup> In light of Mr. García's advanced age and medical condition, the court also urged the state to provide Mr. García with a discretionary sum of money to pay for his medical and psychological treatments in the United Kingdom.<sup>134</sup> The court ordered the state to pay £20,000 sterling in favor of Mr. García for non-pecuniary damages.<sup>135</sup>

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119. *Id.* ¶¶ 81–91.

120. *Id.* ¶ 102.

121. *Id.* ¶ 121.

122. *Id.*

123. *Id.* ¶ 126.

124. *Id.* ¶ 127.

125. *Id.*

126. *Id.* ¶ 138.

127. *Id.* ¶ 139.

128. *Id.* ¶ 142.

129. *Id.* ¶ 206.

130. *Id.* ¶ 197.

131. *Id.* ¶ 206.

132. *Id.* ¶ 220.

133. *Id.* ¶ 226.

134. *Id.* ¶ 233.

135. *Id.* ¶ 246.

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B. VENEZUELA DENOUNCES INTER-AMERICAN CONVENTION ON HUMAN RIGHTS

In September 2012, Venezuela gave notice that it was withdrawing from the American Convention, thereby ending the jurisdiction of the Inter-American Court over new claims against Venezuela as of September 10, 2013.<sup>136</sup> Since its entry into force in 1978, twenty-four of the thirty-five member States of the Organization of American States have ratified the American Convention and accepted the jurisdiction of the court.<sup>137</sup>

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136. Press Release, Inter-American Convention on Human Rights, IACHR Deeply Concerned over Result of Venezuela's Denunciation of the American Convention (Sept. 10, 2013) (on file with author), *available at* [https://www.oas.org/en/iachr/media\\_center/PReleases/2013/064.asp](https://www.oas.org/en/iachr/media_center/PReleases/2013/064.asp).

137. *Id.*

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