

International Courts and Tribunals

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This article summarizes significant developments in 2012 concerning international courts and tribunals, particularly the International Court of Justice, the International Criminal Court, the International Criminal Court for the Former Yugoslavia, the Special Court for Sierra Leone, and international tribunals operating under the auspices of the Permanent Court of Arbitration.¹

I. International Court of Justice

The International Court of Justice (ICJ or the Court) is the principal permanent judicial organ of the United Nations.² It has jurisdiction to decide disputes submitted to it by states parties and to render advisory opinions requested by certain U.N. organs.³ The list of cases currently pending before the ICJ may be found on the ICJ's website.⁴ This section briefly outlines the contentious cases decided by the Court and lists the composition of the Court.

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1. For developments in international courts and tribunals during 2011, see Yulia Andreeva, Maurizio Brunetti & Guillaume Lemenez, *International Courts*, 46 INT'L LAW. 129 (2012).

2. *The Court*, INT'L CT. JUSTICE, <http://www.icj-cij.org/court/index.php?p1=1> (last visited Feb. 27, 2013).

3. See *id.*

4. *Cases: List of Cases Referred to the Court since 1946 by Date of Culmination*, INT'L CT. JUSTICE, <http://www.icj-cij.org/docket/index.php?p1=3&p2=2&sort=2&p3=0#2012> (last visited Feb. 27, 2013).

A. CONTENTIOUS CASES

During the period under review, the ICJ delivered four judgments and an advisory opinion, which are summarized below. Details on the two orders delivered in 2012 can be found on the ICJ's website.⁵

1. *Territorial and Maritime Dispute (Nicaragua v. Colombia)*

On November 19, 2012, the ICJ delivered a judgment in a dispute raised by Nicaragua against Colombia concerning title to island territory and maritime delimitation.⁶ In its application to the Court on December 6, 2001, Nicaragua claimed sovereignty over several islands and other maritime features in the San Andrés Archipelago and sought a determination on the maritime delimitation between itself and Colombia.⁷ On December 13, 2007, the ICJ issued a decision with respect to Preliminary Objections in which it found that Colombia had sovereignty over three islands: San Andres, Providencia, and Santa Catalina.⁸

In its latest judgment, the Court concluded that Colombia has sovereignty over the remaining islands still in dispute.⁹ Because neither party could establish title by virtue of the doctrine of *uti possidetis juris*, the Court found that Colombia had established title to the disputed territory by way of consistently acting *à titre de souverain*. The Court also concluded that each island would have a twelve-nautical-mile territorial sea envelope and that the delimitation of the continental shelf would extend 200 nautical miles due east from designated points on the baselines of each territorial sea delimitation.¹⁰

2. *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*

On July 20, 2012, the ICJ delivered a judgment in a dispute raised by Belgium regarding Senegal's failure to prosecute the former president of Chad, Hissène Habré.¹¹ In its application to the ICJ on February 19, 2009, Belgium complained that Senegal had violated its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and customary international law for failing to prosecute or extradite the former president for "crimes of torture and crimes against humanity."¹² The Court concluded that Senegal had violated its obligations under the Convention after Belgium requested extradition because Senegal had failed to prosecute or extradite Habré within a reasonable time and "without delay."¹³

5. *Id.*

6. Territorial and Maritime Dispute (Nicar. v. Colom.), Judgment, 2012 I.C.J. 124, at 2 (Nov. 19), available at <http://www.icj-cij.org/doCKET/files/124/17164.pdf>.

7. Application of the Republic of Nicaragua, Territorial and Maritime Dispute (Nicar. v. Colom.), 2001 I.C.J. 124, ¶ 2 (Dec. 6), available at <http://www.icj-cij.org/doCKET/files/124/7079.pdf>.

8. Territorial and Maritime Dispute (Nicar. v. Colom.), Preliminary Objections, Judgment, 2007 I.C.J. 124, ¶ 142 (Dec. 13), available at <http://www.icj-cij.org/doCKET/files/124/14305.pdf>.

9. Territorial and Maritime Dispute (Nicar. v. Colom.), Judgment, 2012 I.C.J. 124, at 2 (Nov. 19), available at <http://www.icj-cij.org/doCKET/files/124/17164.pdf>.

10. *Id.* at 3.

11. Questions Relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgment, 2012 I.C.J. 144, ¶ 12 (July 20), available at <http://www.icj-cij.org/doCKET/files/144/17064.pdf>.

12. *Id.* ¶ 12.

13. *Id.* ¶¶ 114-15, 117, 122.

The Court determined that it did not have jurisdiction to decide Belgium's claims under customary international law because at the time of the application there was no dispute between the parties regarding Senegal's obligations under customary international law.¹⁴ Nonetheless, the Court unanimously concluded that it had jurisdiction under the Convention.¹⁵ One of the deciding reasons for this was because the Court recognized that all parties could enforce obligations under the Convention.¹⁶ This case marks the first time the Court concluded that it had jurisdiction over a dispute between parties to the Convention against Torture and one of the rare occasions in which the court decided obligations established by international human rights treaties.¹⁷

3. *Ahmadou Sadio Diallo* (Republic of Guinea v. Democratic Republic of the Congo)

On June 19, 2012, the ICJ delivered a judgment granting compensation in a diplomatic protection claim raised by Guinea against the Democratic Republic of the Congo (the DRC).¹⁸ In its application to the ICJ on December 28, 1998, Guinea asserted that the DRC had unlawfully imprisoned its citizen, Ahmadou Sadio Diallo, and seized "his sizable investments, businesses, movable and immovable property and bank accounts."¹⁹

In a November 30, 2010 judgment on the merits, the Court concluded that the DRC had violated its obligations under Articles 9 and 13 of the International Covenant on Civil and Political Rights (ICCPR), Articles 6 and 12 of the African Charter on Human and Peoples' Rights (ACHPR), and Article 36 of the Vienna Convention on Consular Rights.²⁰ The Court gave the parties six months to come to an agreement on the question of compensation.²¹

Failing agreement on the question of compensation, the Court awarded Guinea damages of \$95,000 in its judgment this year as compensation for personal and property injuries arising from the unlawful detention and expulsion of Ahmadou Sadio Diallo.²²

14. *Id.* ¶ 55.

15. *Id.* ¶ 122.

16. *Id.* ¶ 68.

17. Cindy Galway Buys, *Belgium v. Senegal: The International Court of Justice Affirms the Obligation to Prosecute or Extradite Hissène Habré Under the Convention Against Torture*, AM. SOC'Y INT'L L. INSIGHTS, Sept. 2012, at 2, available at <http://www.asil.org/pdfs/insights/insight120911.pdf> ("Jurisdiction under CAT has been claimed before, but never found to be proper."), Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Rwanda), Jurisdiction of the Court and Admissibility of the Application, 2006 I.C.J. 6 (Feb. 3).

18. *See generally* Ahmadou Sadio Diallo (Rep. Guinea v. Dem. Rep. Congo), Judgment, 2012 I.C.J. 103, at 3 (June 19), available at <http://www.icj-cij.org/docket/files/103/17044.pdf> [hereinafter Rep. Guinea v. Dem. Rep. Congo 2012 Judgment].

19. Application Instituting Proceedings, Ahmadou Sadio Diallo (Rep. Guinea v. Dem. Rep. Congo), Application, 1998 I.C.J. 103, at 3 (Dec. 28), available at <http://www.icj-cij.org/docket/files/103/7175.pdf>.

20. Rep. Guinea v. Dem. Rep. Congo 2012 Judgment, *supra* note 18, ¶¶ 3, 5.

21. Ahmadou Sadio Diallo (Rep. Guinea v. Dem. Rep. Congo), Judgment, 2010 I.C.J. 639, ¶ 7 (Nov. 30), available at <http://www.icj-cij.org/docket/files/103/16244.pdf>.

22. Rep. Guinea v. Dem. Rep. Congo 2012 Judgment, *supra* note 18, at ¶ 56 (awarding Guinea \$10,000 for loss of property based on equitable considerations and awarding Guinea \$85,000 for non-material injury, i.e., psychological injury and loss of reputation).

4. *Jurisdictional Immunities of the State* (Germany v. Italy: Greece intervening)

On February 3, 2012, the ICJ delivered a judgment finding that Italy violated Germany's right to jurisdictional immunity.²³

In an application to the ICJ on December 23, 2008, Germany complained that Italy had violated customary international law by allowing civil proceedings to be brought against it by Italian victims of Nazi persecution.²⁴ Italy first argued that customary international law had developed to the point that state immunity should not extend to Germany for "acts occasioning death, personal injury or damage to property" on its territory even if the acts in question were performed *jure imperii*.²⁵ Italy also argued that immunity was appropriately denied when Germany had committed serious violations under international law.²⁶ The Court concluded that a state is entitled to jurisdictional immunity under customary international law even if the conduct that gave rise to the claim was unlawful.²⁷

5. *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development (Request for Advisory Opinion)*

On February 1, 2012, the ICJ issued an advisory opinion in a dispute raised by the Executive Board of the International Fund for Agricultural Development (IFAD or Fund), finding that a judgment given in an employment case by the Administrative Tribunal of the International Labour Organization (the Tribunal) was valid.²⁸

Saez García served as a program officer at Global Mechanism at IFAD until she was let go due to a reduction in the budget.²⁹ After a challenge to the decision failed before the Joint Appeal's Board of the Fund, Ms. Garcia filed a complaint with the Tribunal.³⁰ In its judgment on February 3, 2010, the Tribunal ordered the Fund to reinstate Ms. Garcia and awarded her a payment of lost salaries, allowances, and entitlements.³¹ The Executive Board of the Fund requested the Court for an advisory opinion on the validity of the April 22, 2010.³²

The Court concluded that the Tribunal was competent *ratione personae* to consider the complaint brought by Saez García against the Fund because (1) she was an official of the Fund, an international organization that recognizes the jurisdiction of the Tribunal; and

23. See *Jurisdictional Immunities of the State* (Ger. v. It.: Greece intervening), Judgment, 2012 I.C.J. 143, ¶ 139 (Feb. 3) [hereinafter *Ger. v. It. 2012 Judgment*], available at <http://www.icj-cij.org/docket/files/143/16883.pdf>.

24. Application Instituting Proceedings, *Jurisdictional Immunities of the State* (Ger. v. It.: Greece intervening), 2008 I.C.J. 143, at 4 (Dec. 23), available at <http://www.icj-cij.org/docket/files/143/14923.pdf>.

25. *Id.* at 26.

26. *Ger. v. It. 2012 Judgment*, *supra* note 22, at 2.

27. *Id.* ¶ 93.

28. Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development, Advisory Opinion, 2012 I.C.J. 146, at 3 (Feb. 1), available at <http://www.icj-cij.org/docket/files/146/16871.pdf>.

29. *Id.* ¶ 70.

30. *Id.* ¶ 50.

31. *Id.*

32. *Id.* ¶ 63.

(2) the Tribunal had authority to make a determination with respect to the non-renewal of her contract by the Fund.³³

B. COMPOSITION OF THE COURT

As of November 19, 2012, the Court was composed of the following judges: Peter Tomka (Slovakia), President; Bernardo Sepúlveda-Amor (Mexico), Vice-President; 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 of America); Giorgio Gaja (Italy); Julia Sebutinde (Uganda); and Dalveer Bhandari (India).³⁴

II. The Permanent Court of Arbitration

The Permanent Court of Arbitration (PCA) is an inter-governmental organization, the purpose of which is to facilitate arbitration and other means of peaceful dispute settlement between States, State-controlled entities, intergovernmental organizations, and private parties. PCA member states have signed one or both of the PCA's founding conventions (the 1899 and 1907 Conventions for the Pacific Settlement of International Disputes). The latest state to become a member of the PCA is the People's Republic of Bangladesh, whose membership became effective on February 26, 2012, thus bringing the number of member States to 115.³⁵

The PCA's Secretariat, the International Bureau, headed by its Secretary-General, offers registry services and administrative and legal support to ad hoc tribunals and commissions. As of November 29, 2012, twenty-four new cases were added to the PCA's docket in 2012.³⁶ As of March 2, 2013, the PCA served as a registry in seventy pending registry cases; thirty-eight were investor-State disputes, twenty-seven were brought under contracts of which one party is a State, State entity, or inter-governmental organization, and five were inter-State arbitrations.³⁷

Inter-State arbitrations currently before the PCA include *Republic of Mauritius v. The United Kingdom of Great Britain and Northern Ireland*, *Indus Waters Kishenganga Arbitration (Pakistan v. India)*, *Bangladesh v. India*, *Arbitration Between the Republic of Croatia and The Republic of Slovenia*, and one that is not publically disclosed.³⁸ The PCA Secretary-General was asked to designate an appointing authority, directly appoint an arbitrator or an expert, or decide a challenge to an arbitrator in thirty-five new cases, bringing the total to 221

33. *Id.* ¶¶ 80, 82, 91.

34. *Current Members*, INT'L CT. JUSTICE, <http://www.icj-cij.org/court/index.php?p1=1&p2=2&p3=1> (last visited Mar. 2, 2013).

35. *See Three New Member States Join the PCA*, PERMANENT CT. ARB., http://www.pca-cpa.org/shownews.asp?ac=view&nws_id=327&pag_id=1261 (last visited Feb. 27, 2013).

36. The numbers of cases were compiled based on information provided to the author by the PCA International Bureau.

37. *See Cases*, PERMANENT CT. OF ARB., http://www.pca-cpa.org/showpage.asp?pag_id=1029 (last visited Feb. 27, 2013).

38. *Id.*

such cases in the last six years. Fourteen awards were rendered in PCA-administered arbitrations in 2012.³⁹

A. WORK ON NEW PROCEDURAL RULES

At the end of 2011, the Administrative Council of the PCA approved the constitution of a Drafting Committee to update four sets of PCA procedural rules for arbitration.⁴⁰

The Administrative Council mandated the revision of the following PCA Optional Rules: (1) Optional Rules for Arbitrating disputes between Two States (1992); (2) Optional Rules for Arbitrating Disputes between Two Parties of Which Only One is a State (1993); (3) Optional Rules for Arbitration between International Organizations and States (1996); and (4) Optional Rules for Arbitration between International Organizations and Private Parties (1996).⁴¹ The rules under revision were based on the 1976 United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules, and one of the tasks of the Drafting Committee, by Professor Jan Paulsson, would be to take into account the 2010 revisions to the UNCITRAL Arbitration Rules.⁴² The new procedural rules, merging these rules into a single set of procedural rules, were adopted on December 17, 2012.⁴³

B. DEVELOPMENTS IN THE *INDUS WATERS KISHENGANGA* ARBITRATION

The 2011 Year in Review reported on the *Indus Waters Kishenganga* Arbitration, an inter-State arbitration between Pakistan and India.⁴⁴ In particular, we described the Court of Arbitration's weeklong site visit to the Neelum-Jhelum and Kishenganga hydroelectric projects and surrounding areas, which took place in June 2011.⁴⁵ Such site visits by interstate arbitral tribunals are very rare.⁴⁶ On February 4, 2012, the Court of Arbitration made a second one-day site visit to the Neelum River Valley.⁴⁷ On August 31, 2012, the Court of Arbitration concluded a two-week hearing on the merits.⁴⁸ The award is due in 2013.⁴⁹

39. Based on information provided to the author by the PCA International Bureau.

40. See B Daly, *New Procedural Rules of the Permanent Court of Arbitration*, INT'L BAR ASSOC. ARBITRATION NEWSLETTER (Int'l Bar Assoc. Arbitration Comm.), Apr. 2012, at 92.

41. *Id.*

42. *Id.*

43. *Arbitration Rules 2012*, PERMANENT CT. OF ARB., http://www.pca-cpa.org/showfile.asp?fil_id=2077 (last visited Feb. 18, 2013).

44. See Andreeva, Brunett & Lemenez, *supra* note 1, at 139-41.

45. *Id.* at 140.

46. *Id.*

47. Press Release, Permanent Court of Arbitration, *Indus Waters Kishenganga Arbitration (Pak. v. India) Court of Arbitration Conducts Visit of the Neelum River Valley* (Feb. 15, 2012), http://www.pca-cpa.org/showfile.asp?fil_id=1815 [hereinafter PCA Feb. Press Release].

48. Press Release, Permanent Court of Arbitration, *Indus Waters Kishenganga Arbitration (Pak. v. India) Court of Arbitration Concludes Hearing on the Merits* (Sept. 1, 2012), http://www.pca-cpa.org/showfile.asp?fil_id=1970.

49. PCA Feb. Press Release, *supra* note 47.

C. AWARDS

The majority of arbitrations conducted under the auspices of the PCA are confidential, and awards rendered in these proceedings are not publicly available.

In *ICS Inspection and Control Services Ltd. v. Argentina*, the PCA Tribunal (Tribunal) declined jurisdiction over the dispute on the grounds that the claimant had not observed a provision in the U.K. – Argentina bilateral investment treaty (BIT), stipulating that the investor litigate the dispute for eighteen months in Argentinean courts before initiating international arbitration.⁵⁰

Citing the *Wintershall v. Argentina* award, where the arbitrators came to the same conclusion, the Tribunal held that such a requirement was mandatory and amounted to more than a “mere waiting period.”⁵¹ This outcome is similar to the decision of the District of Columbia Court of Appeals, which earlier this year set aside the award in the case of *BG v. Argentina*, citing the same requirement in the BIT in question.⁵² The Tribunal also refused to import a dispute resolution provision that did not contain such a litigation requirement from another BIT concluded by Argentina via the Most-Favored Nation provision of the U.K. – Argentina BIT, thus departing from the approach taken in *Maf-fezini v. Spain*.⁵³

In *Chevron v. Ecuador*, the Tribunal rendered an interim award on jurisdiction and admissibility, in which it upheld its jurisdiction.⁵⁴ Of interest is the Tribunal’s obiter dictum discussion of the fork-in-the-road provision in the United States – Ecuador BIT.⁵⁵ The Tribunal rejected Ecuador’s argument that Ecuadorian court litigation involving the claimants precluded the jurisdiction of the Tribunal, the fork-in-the-road clause notwithstanding, because private parties not participating in the treaty arbitration initiated these local proceedings against the claimants in Ecuadorean courts.⁵⁶

But the Tribunal criticized the “triple identity” test prevalent in investment treaty jurisprudence, whereby, in order to trigger the application of the fork-in-the-road clause, identity of the parties, object, and cause of action was required.⁵⁷ It noted that “[a] strict application of the triple identity test would deprive the fork in the road provision of all or most of its practical effect.”⁵⁸

50. *ICS Inspection & Control Servs. Ltd. v. Argentine Rep. (U.K. v. Arg.)*, Case No. 2010-9 (Perm. Ct. Arb. 2012), <http://us.practicallaw.com/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1247339647468&ssbinary=true>.

51. *Id.* ¶¶ 247-51.

52. *Rep. of Arg. v. BG Group PLC*, 665 F.3d 1363, 1370-71 (D.C. Cir. 2012).

53. Case No. 2010-9, ¶¶ 275-82.

54. *Chevron Corp. v. Republic of Ecuador (U.S. v. Ecuador)*, Case No. 2009-23 (Perm. Ct. Arb. 2012), <http://www.chevron.com/documents/pdf/ecuador/SecondTribunalInterimAward.pdf>.

55. A “fork-in-the-road” provision is a forum selection clause that typically requires the parties to choose between international arbitration and litigation in municipal courts.

56. Case No. 2009-23, ¶¶ 4.79-.80, 4.89.

57. *Id.* ¶¶ 4.75-.76.

58. *Id.* ¶ 4.76.

III. The International Criminal Court

In 2012, the International Criminal Court (ICC) marked the first decade of its existence.⁵⁹ It saw Fatou Bensouda become the head of the Office of the Prosecutor (OTP), when the term of Luis Moreno Ocampo concluded.⁶⁰ The OTP conducted investigations in seven countries: Uganda, the Democratic Republic of Congo, the Darfur region of Sudan, the Republic of Kenya, the Central African Republic, Libya, and Côte d'Ivoire; and conducted preliminary examinations in eight additional countries: Afghanistan, Georgia, Guinea, Colombia, Honduras, Korea, Nigeria and Mali.⁶¹ In 2012, the government of Mali referred the situation since January 2012 in Mali.⁶² The ICC also issued its first judgment, in *The Prosecutor v. Thomas Lubanga Dyilo*.⁶³

A. JUDGMENT, SENTENCE, AND REPARATIONS IN THE LUBANGA CASE

On March 14, 2012, Trial Chamber I (Trial Chamber) delivered its Judgment Pursuant to Article 74 of the Statute, finding Thomas Lubanga Dyilo guilty, as a co-perpetrator, of the charges of conscripting and enlisting children under the age of fifteen years into the Forces Patriotiques pour la Libération du Congo (FPLC) and using them to actively participate in hostilities within the meaning of Articles 8(2)(e)(vii) and 25(3)(a) of the Rome Statute.⁶⁴ The Court determined that the violations took place in the context of a non-international armed conflict in the Ituri region during a period beginning in early September 2002 and running through August 13, 2003.⁶⁵

The Trial Chamber issued a unanimous decision of guilt, applying the standard of “beyond reasonable doubt.”⁶⁶ Judges Fulford and Odio Benito authored separate and dissenting opinions, respectively. Judge Fulford took issue with the test laid down by the Pre-Trial Chamber in regards to whether an individual has committed a crime “jointly with another” pursuant to Article 25(3)(a) of the Rome Statute.⁶⁷ Judge Odio Benito disagreed with the majority of the Trial Chamber in which it dealt with “witnesses who have the dual status of victims, when evaluating their status as victims participating in [the] case.”⁶⁸

59. For additional information on developments in international criminal law, see Karen L. Corrie, *International Criminal Law*, 46 INT'L LAW. 145 (2012).

60. Farouk Chothia, *Africa's Fatou Bensouda Is New ICC Chief Prosecutor*, BBC (Dec. 12, 2011, 12:54 PM), <http://www.bbc.co.uk/news/world-africa-16029121>.

61. *Office of the Prosecutor*, INT'L CRIM. CT., http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/Pages/office%20of%20the%20prosecutor.aspx (last visited Feb. 27, 2013).

62. *Mali: Urged to Investigate Possible War Crimes*, AMNESTY INT'L (July 18, 2012), <http://www.amnesty.org/en/news/icc-urged-make-prompt-decision-investigating-mali-war-crimes-2012-07-19>.

63. *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, Judgment (Mar. 14, 2012), <http://www.icc-cpi.int/iccdocs/doc/doc1379838.pdf> [hereinafter *Dyilo Judgment*].

64. *Id.* ¶ 1358.

65. *Id.* ¶ 1359.

66. *Id.* ¶ 1357.

67. *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, Separate Opinion of Judge Adrian Fulford, ¶¶ 1-3 (Mar. 14, 2012), <http://www.icc-cpi.int/iccdocs/doc/doc1379838-A.pdf>.

68. *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06, Separate and Dissenting Opinion of Judge Elizabeth Odio Benito, ¶ 23 (Mar. 14, 2012), <http://www.icc-cpi.int/iccdocs/doc/doc1379838-O.pdf> [hereinafter *Benito March 14 Dissent*].

Judge Odio Benito also criticized the majority as to the evidentiary value accorded to certain video footage introduced as evidence.⁶⁹ Finally, Judge Odio Benito disagreed with the majority as to the legal definitions of the crimes of enlistment, conscription, and use of children under the age of fifteen to participate actively in hostilities—particularly the elements of “national armed forces” and “to participate actively in hostilities,”⁷⁰ criticizing the chamber’s decision not to proffer a definition of “to participate actively in hostilities” and arguing that sexual violence should be included within the legal concept of “to participate actively in hostilities.”⁷¹

On July 10, 2012, the Trial Chamber issued its Decision on Sentence Pursuant to Article 76 of the Statute, sentencing Lubanga to fourteen years imprisonment.⁷² The Trial Chamber applied Articles 23, 76, 77, 78, and 81(2)(a) of the Rome Statute and Rules 143, 145, and 146 of the Rules of Procedure and Evidence.⁷³ The Trial Chamber held that in determining the sentence, they were entitled to consider sexual violence committed against the children associated with the FPLC—despite the Prosecutor’s decision not to charge Lubanga with rape or other forms of sexual violence.⁷⁴

The majority, however, found that, based on the totality of evidence provided, they were “unable to conclude that sexual violence against children who were recruited was sufficiently widespread that it could be characteri[z]ed as occurring in the ordinary course of the implementation of the common plan for which Mr. Lubanga [was] responsible.”⁷⁵ Judge Odio Benito issued a dissenting opinion in which she argued for a joint sentence of fifteen years (pursuant to Article 78(3) of the Rome Statute), based separately on conscription of children under fifteen, enlisting children under the age of fifteen, and using children to participate actively in hostilities.⁷⁶

On August 7, 2012, the Trial Chamber issued its Decision Establishing the Principles and Procedures to be Applied to Reparations in the Lubanga case.⁷⁷ The Trial Chamber, acting pursuant to Article 75(1) of the Rome Statute, established principles of reparations related to restitution, compensation, and rehabilitation.⁷⁸ Because Lubanga was declared indigent, his participation in a reparations scheme could include “public or private apolog[ies] to the victims,” but all monetary reparations will come from other sources, largely from the Trust Fund for Victims.⁷⁹

69. *Id.* ¶ 36.

70. *Id.* ¶¶ 2, 4.

71. *Id.* ¶¶ 15, 17.

72. Prosecutor v. Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06, Sentence and Dissenting Opinion of Judge Elizabeth Odio Benito, Sentence ¶ 107 (July 10, 2012), <http://www.icc-cpi.int/iccdocs/doc/doc1438370.pdf>.

73. *Id.* ¶ 17.

74. *Id.* ¶ 68.

75. *Id.* ¶ 74.

76. Benito March 14 Dissent, *supra* note 68, ¶ 26.

77. Prosecutor v. Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06, Decision Establishing the Principles and Procedures to be Applied to Reparations (Aug. 7, 2012), <http://www.icc-cpi.int/iccdocs/doc/doc1447971.pdf>.

78. *Id.* ¶¶ 223-36.

79. *Id.* ¶¶ 269, 271.

B. STATEMENT FROM THE OTP ON THE SITUATION IN PALESTINE

In 2009, Ali Khashan, acting as Minister of Justice of the Government of Palestine, lodged a declaration with the ICC accepting its exercise of jurisdiction over “acts committed on the territory of Palestine since 1 July 2002.”⁸⁰ On April 3, 2012, the OTP released a statement explaining that the “preconditions to the exercise of jurisdiction” were absent, thus precluding a formal investigation.⁸¹ The OTP noted that the status of Palestine before the U.N. General Assembly was that of “observer,” rather than “non-member State.”⁸² The question may be revisited; however, as the U.N. General Assembly granted Palestine “non-member observer status” in November 2012.⁸³

In its statement, the OTP focused on the status of Palestine, explaining the requisite of statehood for the Court’s jurisdiction.⁸⁴ It pointed to Article 12 of the Rome Statute, stating that it provides the basis for a state to confer jurisdiction on the Court, either by becoming a party to the Rome Statute⁸⁵ or by making an ad hoc declaration accepting the Court’s jurisdiction.⁸⁶ Thus, when considering the declaration of Palestine, the question arises as to who may properly determine whether Palestine is a state for the purpose of ICC jurisdiction under Article 12. The OTP determined that this competence lies first with the U.N. Secretary-General, “who, in the case of doubt, will defer to the guidance of the General Assembly.”⁸⁷ It went on to explain that the Assembly of States Parties to the Rome Statute may also decide to address the matter in accordance with Article 112(2)(g), which states that “[t]he Assembly shall [p]erform any other function consistent with this Statute or the Rules of Procedure and Evidence.”⁸⁸

IV. The International Criminal Court for the Former Yugoslavia

The U.N. Security Council established the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993 with a mandate to prosecute the individuals most responsible for the atrocities committed during the Balkan War of the 1990s.⁸⁹ The Tribunal has indicted 161 persons during a ten-year period from 1994 to 2004.⁹⁰ Of the 161

80. Int’l Crim. Ct., Office of the Prosecutor, Situation in Palestine, ¶ 1 (Apr. 3, 2012), <http://www.icc-cpi.int/NR/rdonlyres/C6162BBF-FEB9-4FAF-AFA9-836106D2694A/284387/SituationinPalestine030412ENG.pdf>.

81. *Id.* ¶¶ 3, 7.

82. *Id.* ¶ 7.

83. G.A. Res. 67/19, ¶ 2, U.N. Doc. A/RES/67/19 (Nov. 29, 2012); see also Associated Press, *International Criminal Court Prosecutor to Mull ‘Legal Implications’ of Palestinian Status*, FOX NEWS (Nov. 30, 2012), <http://www.foxnews.com/world/2012/11/30/international-criminal-court-prosecutor-to-mull-legal-implications-palestinian/>.

84. See Situation in Palestine, *supra* note 80, ¶¶ 4-5.

85. Rome Statute of the International Criminal Court art. 12(1), July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002).

86. *Id.* art. 12(3).

87. Situation in Palestine, *supra* note 80, ¶ 5.

88. Rome Statute, *supra* note 85, art. 112(2)(g).

89. S.C. Res. 857, U.N. Doc. S/RES/857 (Aug. 5, 1993).

90. *Key Figures of the Cases*, ICTY, <http://www.icty.org/sid/24> (last updated Jan. 31, 2013). The first indictment was issued against Dragan Nikolic on November 4, 1994. See Prosecutor v. Dragan Nikolic, Case No. IT-94-2, Case Information Sheet, 1 (Int’l Crim. Trib. for the Former Yugoslavia), http://www.icty.org/x/cases/dragan_nikolic/cis/en/cis_nikolic_dragan.pdf (last visited Mar. 2, 2013). The last indictment was issued

persons, the Tribunal concluded proceedings against 134 persons.⁹¹ Proceedings at the first instance of trial or appeals phase are ongoing for twenty-seven of the accused.⁹²

A. RADOVAN KARADŽIĆ AND RATKO MLADIĆ—THE MOST HIGH-PROFILE CASES

The Tribunal is currently prosecuting two individuals, Radovan Karadžić and Ratko Mladić, who came to symbolize the Serbian campaign to kill, pillage, and ethnically cleanse Serb territories in Bosnia and Herzegovina of Bosnian Muslims and Croats. Karadžić, a former president of the Republika Srpska, is charged with eleven counts of genocide, war crimes, and crimes against humanity. The Prosecution ended the presentation of its case on May 25.⁹³

On June 11 and 13, the trial chamber held a hearing pursuant to Rule 98 bis⁹⁴ to determine whether the charges should proceed to the defense phase.⁹⁵ On June 28, the trial chamber issued its finding stating that the prosecution met the burden of providing evidence capable of supporting a conviction on ten charges and dismissed one count of genocide that was committed in 1992 against Bosnian Muslims and Croats in several municipalities.⁹⁶

The trial chamber found that the totality of the evidence presented with respect to the charge of genocide, i.e. “the killing of, serious bodily or mental harm to, the forcible displacement of, and conditions of life inflicted” calculated to bring about the physical destruction of the Bosnian Muslims and Croats, “did not reach the level from which a reasonable tier of fact could infer that genocide occurred in the municipalities” in 1992.⁹⁷ Both parties are appealing the trial chamber’s decision, with the Prosecution alleging that the charge of genocide in the municipalities was dismissed in error, and Karadžić arguing that the chamber erred when it upheld the charge of taking U.N. personnel hostage.⁹⁸

The trial of Ratko Mladić, a former General of the Bosnian Serb Army, began on May 16, 2012.⁹⁹ During the opening statements, the Prosecution mapped out the charges against the accused, which include a charge of genocide, crimes against humanity, and

in 2004 as required per the completion strategy. See *Transfer of Cases*, ICTY, <http://www.icty.org/sid/103> (last visited Feb. 25, 2013).

91. *Key Figures of the Cases*, *supra* note 90.

92. *Id.*

93. Prosecutor v. Radovan Karadžić, Case No. IT-95-5/18-1, Case Information Sheet, 5 (Int’l Crim. Trib. for the Former Yugoslavia) [hereinafter Karadžić Case Information Sheet], available at http://www.icty.org/x/cases/karadzic/cis/en/cis_karadzic_en.pdf (last visited Mar. 2, 2013).

94. This procedure falls under Rule 98 bis of the Rules of Procedure and Evidence: Judgment of Acquittal: “At the close of the Prosecutor’s case, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgment of acquittal on any count if there is no evidence capable of supporting a conviction.” Rules of Procedure and Evidence, R. 98 bis, U.N. Doc. IT/32/Rev. 43 (July 24, 2009).

95. Karadžić Case Information Sheet, *supra* note 93.

96. *Id.*

97. *Id.*

98. Prosecutor v. Radovan Karadžić, Case No. IT-95-5/18-1, Appeal from Denial of Judgment of Acquittal for Hostage Taking (Int’l Crim. Trib. for the Former Yugoslavia July 25, 2012).

99. Prosecutor v. Ratko Mladić, Case No. IT-09-92, Case Information Sheet (Int’l Crim. Trib. for the Former Yugoslavia), available at http://icty.org/x/cases/mladic/cis/en/cis_mladic_en.pdf (last visited Mar. 2, 2013).

violation of the laws and customs of war.¹⁰⁰ He is accused of committing these crimes both in an individual criminal capacity and in concert with others through participation in a joint criminal enterprise.¹⁰¹ The trial was delayed by a few weeks due to the Prosecution's failure to disclose several thousand possible exhibits to the Defense.¹⁰²

The trial chamber, concerned with the impact on the fairness of the trial if the Defense does not have adequate time to review the evidence and to prepare for the Trial, decided that the appropriate remedy to ensure the fair trial is to postpone the trial until June 25.¹⁰³ Karadžić and Mladić, along with Slobodan Milošević,¹⁰⁴ are the most high profile criminals put on trial, and the trials are watched by victims to see if the individuals who have evaded the Tribunal for years will finally be found criminally responsible for the atrocities committed in Bosnia and Herzegovina.

B. THE LAST CASE BEFORE THE TRIBUNAL—GORAN HADŽIĆ

The ICTY started its final trial on October 16, against Goran Hadžić, who was the Tribunal's last fugitive captured on July 20, 2011.¹⁰⁵ The Prosecution charged Hadžić with crimes against humanity and war crimes, under individual criminal responsibility and participation in a joint criminal enterprise with an aim to permanently remove the non-Serbian population from a large territory of the Republic of Croatia.¹⁰⁶ The indictment contends that Hadžić, who was the President of the Republic of Serbian Krajina, was in a position to formulate and assist in carrying out the objectives of the joint criminal enterprise.¹⁰⁷

C. PROSECUTOR V. ŠEŠELJ

The closing arguments in the five-year trial of Vojislav Šešelj in which he faces charges of fourteen counts of crimes against humanity and violations of the laws or customs of war

100. *Id.*

101. Prosecutor v. Ratko Mladić, Case No. IT-09-92, Fourth Amended Indictment, ¶¶ 4-5 (Int'l Crim. Trib. for the Former Yugoslavia Dec. 16, 2011), available at <http://icty.org/x/cases/mladic/ind/en/111216.pdf>.

102. Bruno Waterfield, *Mladic Trial Delayed After "Millions of Pages Not Disclosed to Defence"*, THE TELEGRAPH (May 17, 2012, 3:58 PM), <http://www.telegraph.co.uk/news/worldnews/europe/serbia/9271580/Mladic-trial-delayed-after-millions-of-pages-not-disclosed-to-defence.html>.

103. Prosecutor v. Ratko Mladić, Case No. IT-09-92, Decision on Urgent Defence Motion of 14 May 2012 and Reasons for Decision on Two Defence Requests for Adjournment of the Start of Trial of 3 May 2012, ¶¶ 5, 7 (Int'l Crim. Trib. for the Former Yugoslavia May 24, 2012), available at <http://icty.org/x/cases/mladic/tdec/en/120524.pdf>.

104. The trial of Slobodan Milošević, a former president of the Federal Republic of Yugoslavia, did not result in a verdict because Milošević died in 2006. HUM. RTS. WATCH, *WEIGHING THE EVIDENCE: LESSONS FROM THE SLOBODAN MILOŠEVIĆ TRIAL* (2006), <http://www.hrw.org/node/11081/section/2>.

105. Prosecutor v. Goran Hadžić, Case No. IT-04-75, Case Information Sheet, 1 (Int'l Crim. Trib. for the Former Yugoslavia), available at http://icty.org/x/cases/hadzic/cis/en/cis_hadzic_en.pdf (last visited Mar. 2, 2013).

106. Prosecutor v. Goran Hadžić, Case No. IT-04-75, Notice of Filing of Second Amended Indictment, ¶¶ 5-7 (Int'l Crim. Trib. for the Former Yugoslavia Mar. 22, 2012), available at <http://icty.org/x/cases/hadzic/ind/en/120322.pdf>.

107. *Id.* ¶ 13.

finally ended on March 20, 2012.¹⁰⁸ While the Trial Chamber deliberated the case, Šešelj was also on trial for contempt of the Tribunal pursuant to Rule 77(A) and A(ii) of the Rules of Procedure and Evidence for failing to remove documents revealing confidential information about protected witnesses on his website.¹⁰⁹ Under Rule 77(A), the Prosecution must prove beyond a reasonable doubt that the Accused had the requisite *actus reus* and *mens rea*.

The trial chamber found that the accused, who is the sole owner of the website and decides what appears on the website, was in a position to take positive action to remove the disclosed material but failed to remove the material.¹¹⁰ The trial chamber also found that the accused had the required *mens rea* as he received previous court decisions to remove confidential material, and the accused explicitly stated that he would not comply with the court's order.¹¹¹ The trial chamber found Šešelj guilty and sentenced him to two years of imprisonment.¹¹²

D. PROSECUTOR V. HARADINAJ- PROSECUTION OF CRIMES IN KOSOVO

In *Prosecutor v. Haradinaj*, the appeals chamber ordered a partial retrial to allow the Prosecution additional time to exhaust all reasonable steps to secure testimony of two crucial witnesses, a request that was previously denied by the trial chamber.¹¹³ Haradinaj, a commander of the Kosovo Liberation Army, was charged with violation of the laws or customs of war in Kosovo in 1998, which were carried out against Serbs and Kosovar Albanians.¹¹⁴ The appeal chamber reasoned that the trial chamber violated the Prosecution's right to a fair trial when it failed to allot additional time, beyond the 125 hours that were allotted at the beginning of the case, and thus prevented the Prosecution from securing testimony from two crucial witnesses who were afraid to testify due to witness intimidation.¹¹⁵ The re-trial commenced in August 2011, and the chamber is expected to issue the verdict before the end of 2012.

E. PROSECUTOR V. GOTOVINA ET AL.—PROSECUTION OF THE HIGHEST RANKING CROATIAN LEADER AT THE ICTY

In *Gotovina et al.*, the trial chamber found the Croatian Generals, Gotovina and Markač, guilty of crimes committed against the Serbian population during Operation Storm in the

108. *Prosecutor v. Vojislav Šešelj*, Case No. IT 03-67, Public Redacted Version of Judgment, ¶ 22 (Int'l Crim. Trib. for the Former Yugoslavia June 28, 2012), available at http://www.icty.org/x/cases/contempt_seselj3/tjug/en/120628_judgement_en.pdf.

109. *Id.* ¶ 2.

110. *Id.* ¶ 19.

111. *Id.*

112. *Id.* ¶¶ 49-51, 58.

113. *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84, Case Information Sheet, 7 (Int'l Crim. Trib. for the Former Yugoslavia), http://icty.org/x/cases/haradinaj/cis/en/cis_haradinaj_al_en.pdf (last visited Mar. 2, 2013).

114. *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84, The Revised Fourth Amended Indictment, ¶¶ 13-20 (Int'l Crim. Trib. for the Former Yugoslavia Jan. 21, 2011), available at <http://icty.org/x/cases/haradinaj/ind/en/110121.pdf>.

115. *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84, Judgment, ¶ 377 (Int'l Crim. Trib. for the Former Yugoslavia July 19, 2010), available at <http://icty.org/x/cases/haradinaj/acjug/en/100721.pdf>.

fall of 1995.¹¹⁶ The trial chamber found that Gotovina conspired with others to permanently remove the Serbian population from the Krajina region and sought to achieve this objective by force, forcible removal, and murders. On November 16, the appeals chamber acquitted and ordered the immediate release of Gotovina and Markač after the majority of judges found that the trial chamber erred in concluding that artillery impact sites farther than 200 meters from the legitimate targets were evidence of unlawful attacks against towns during Operation Storm.¹¹⁷

F. THE ESTABLISHMENT OF THE RESIDUAL MECHANISMS

Perhaps the most significant development with respect to the ICTY was the startup of the Mechanism for International Criminal Tribunals (MICT) on July 1, 2012.¹¹⁸ The Security Council has established the MICT to combine the remaining cases requiring resolution from the ICTY and the International Criminal Tribunal for Rwanda (ICTR) as part of the completion strategy for these two Tribunals.¹¹⁹ The Hague branch is scheduled to begin operations on July 1, 2013, with the mandate to continue the Tribunal's efforts to bring justice and prosecute the most responsible individuals for atrocities committed in the territory of the Former Yugoslav Republic in the 1990s.¹²⁰

V. The Special Court for Sierra Leone

The Special Court for Sierra Leone (SCSL) is mandated to try those who bear the greatest responsibility for serious violations of international humanitarian law, and Sierra Leonean law committed in the territory of Sierra Leone, starting in 1996. In all, the Prosecutor indicted thirteen individuals, including Liberian President Charles Taylor.¹²¹ The trial chamber's judgment in Taylor's case and the current appeal likely represent the fulfillment of the court's original mandate.

A. PROSECUTOR V. CHARLES TAYLOR JUDGMENT

In its judgment, signed by Justices Richard Lussick, Teresa Doherty, and Julia Sebutinde, the trial chamber convicted Taylor of aiding and abetting the commission by the Armed Forces Revolutionary Council (AFRC) and the Revolutionary United Front (RUF) of crimes against humanity and war crimes, including sexual slavery, murder, child soldier conscription, rape, pillaging, and other crimes.¹²² Taylor was also convicted of planning these crimes.¹²³

116. Press Release, ICTY, Tribunal Convicts Gotovina and Markač, Acquits Čermak (Apr. 15, 2011), <http://www.icty.org/sid/10633>.

117. Press Release, ICTY, Appeals Chamber Acquits and Orders Release of Ante Gotovina and Mladen Markač (Nov. 16, 2012), <http://icty.org/sid/11145>.

118. *Id.*

119. S.C. Res. 1966, ¶¶ 1-4, U.N. Doc. S/RES/1966 (Dec. 22, 2010).

120. *Id.*

121. *About*, SPECIAL CT. FOR SIERRA LEONE, <http://www.sc-sl.org/ABOUT/tabid/70/Default.aspx> (last visited Feb. 23, 2013).

122. *Prosecutor v. Charles Taylor*, Case No. SCSL-03-01-T, Judgment, ¶ 6994 (May 18, 2012).

123. *Id.* ¶ 6995.

The Prosecutor alleged that Taylor participated in a Joint Criminal Enterprise (JCE) designed to “forcibly control the population and territory of Sierra Leone and to pillage its resources, in particular diamonds,”¹²⁴ which the Defense disputed.¹²⁵ The chamber found that while Taylor provided significant operational and military support to the Revolutionary Forces inside of Sierra Leone, the prosecution failed to prove Taylor contributed significantly to the JCE.¹²⁶ Instead, the chamber saw Taylor’s relationship with the RUF as “mutually beneficial” and built on “converging and synergistic interests” that evolved over time, not as a JCE.¹²⁷

Despite its JCE finding, the chamber found Taylor aided and abetted the numerous atrocities committed against the civilian population by the RUF/AFRC as part of an explicit operational strategy¹²⁸ designed to achieve military gains, to attract international attention, and to improve negotiating stance.¹²⁹ Taylor, as President of Liberia, was aware of the RUF/AFRC atrocities through intelligence briefings, reports from international organizations, and news reports.¹³⁰ Despite this knowledge, Taylor provided arms and ammunition, moral support and encouragement, military personnel, and operational support to these groups.¹³¹

Taylor’s knowledge of the RUF/AFRC’s stated goal of spreading terror in the civilian population through rape, murder, sexual slavery, forced labor, and other forms of violence and acts of terror, combined with his active support of these operations, made Taylor criminally responsible for aiding and abetting the commission of the RUF/AFRC’s crimes.

Taylor’s conviction for the planning of RUF/AFRC activities stemmed from atrocities committed during the 1998-1999 invasion of Freetown, Sierra Leone. Taylor met with RUF/AFRC leaders, telling them to make their operations “fearful” to pressure the Sierra Leonean government to negotiate and to use “all means” to capture Freetown.¹³² Taylor laid the foundation of the invasion plan, was often updated on the invasion’s progress, and was aware of the brutal and illegal tactics of the fighters.

The chamber determined that Taylor’s plan substantially contributed to the attacks and the crimes, meeting the *actus reus* element.¹³³ The chamber noted that Taylor’s awareness of the RUF/AFRC’s prior tactics and of the “substantial likelihood” that crimes would be committed during the plan’s execution plan proved the planning crime’s mental elements.¹³⁴

124. *Id.* ¶ 6893.

125. The common purpose of the enterprise changed during the trial; it was initially argued by the Prosecution — including up through an early appeal — that the JCE’s purpose was to terrorize the public of Sierra Leone. *Id.* ¶ 6892.

126. *Id.* ¶ 6894.

127. *Id.* ¶ 6895.

128. Examples of operations attacking civilians were named “Operation No Living Thing” and “Operation Spare No Soul.” *Id.* ¶ 6905.

129. *Id.* ¶ 6905.

130. *Id.* ¶ 6947.

131. *Id.* ¶¶ 6907-46.

132. *Id.* ¶ 6958.

133. *Id.* ¶¶ 6965-68.

134. *Id.* ¶¶ 6969-70.

Taylor's control over the activities of the RUF/AFRC was also examined. While the chamber did not judge whether Taylor instigated the crimes, which it found was a moot point given his aiding and abetting conviction, it discussed whether Taylor had ordered the criminal actions or was responsible under the doctrine of superior responsibility.¹³⁵

While Taylor held authority positions in the RUF/AFRC, instructions and guidance he gave to the RUF/AFRC were generally advisory and were not always followed. As a result, the chamber found that he was not responsible for ordering the commission of crimes.¹³⁶

On the issue of superior responsibility, the chamber found that though Taylor wielded substantial influence over the leaders of the RUF/AFRC,¹³⁷ he did not have effective control over them, namely that he did not have the material ability to prevent or punish the commission of the offenses.¹³⁸ Based on the relationships between Taylor and RUF/AFRC leaders, the justices found that the RUF/AFRC military commanders were not Taylor's subordinates and did not feel obligated to follow Taylor's commands.¹³⁹

The Prosecutor also failed to prove that Liberian troops sent into Sierra Leone by Taylor were still subject to his command once across the border.¹⁴⁰ Given these facts, the trial chamber found that Taylor was not criminally responsible under the doctrine of superior responsibility.¹⁴¹

The trial chamber sentenced Taylor to fifty years of detention, a sentence that both the Defense and the Prosecution have appealed.¹⁴² The prosecution is asking for an eighty-year sentence on appeal, regardless of how the appeals chamber rules on its other arguments.¹⁴³ Additionally, the Prosecutor is asking the appeals chamber to find that Taylor ordered and instigated the crimes and to find culpability for crimes in certain geographic areas that were excluded as outside the indictment.¹⁴⁴ The final appeals judgment is expected in September 2013.¹⁴⁵

B. MOVE TO THE RESIDUAL MECHANISM

Following the appeals chamber's judgment in the Taylor's case, the SCSL's mandate will end.¹⁴⁶ The court's responsibilities will shift to a residual mechanism to provide for

135. *Id.* ¶ 6972.

136. *Id.* ¶ 6973.

137. *Id.* ¶ 6979.

138. *Id.* ¶¶ 6981, 6983.

139. *Id.* ¶¶ 6979-82.

140. *Id.* ¶ 6984.

141. *Id.* ¶ 6986.

142. Prosecutor v. Charles Taylor, Case No. SCSL-2003-01-PT, Prosecution's Notice of Appeal (Special Ct. for Sierra Leone July 19, 2012) [hereinafter Prosecution Appellate Brief], available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=SW1ZhnY1yvM%3d&tabid=107>; Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-2003-01-PT, Notice of Appeal of Charles Taylor (Special Ct. for Sierra Leone July 19, 2012), available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=eXdZQ%2bQcRos%3d&tabid=107>.

143. Prosecution Appellate Brief, *supra* note 142.

144. *Id.* ¶ 238.

145. CT. FOR SIERRA LEONE, NINTH ANNUAL REPORT OF THE PRESIDENT OF THE SPECIAL COURT FOR THE SIERRA LEONE 27 (2012) [hereinafter NINTH ANNUAL REPORT], available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=ZEDnSBp6ahc%3d&tabid=176>.

146. *Id.* at 38.

remaining matters related to the court's work.¹⁴⁷ This mechanism, The Residual Special Court for Sierra Leone (RSCSL), is governed by an agreement with Sierra Leone that was ratified in December 2011.¹⁴⁸

The RSCSL is responsible for: administering the court's archives, providing for witness and victim protection and support, evaluating requests for access to evidence and for compensation claims by national authorities, supervising sentence enforcement, reviewing convictions and acquittals, conducting contempt of court proceedings, providing defense counsel and legal aid any proceedings, and preventing double jeopardy.¹⁴⁹ The RSCSL will not have an active trial chamber, though the RSCSL President can constitute a trial chamber as needed for necessary proceedings.¹⁵⁰

Should the remaining fugitive, Johnny Paul Koroma, be captured, the RSCSL may try him.¹⁵¹ But the court's rules were amended in 2008 to allow SCSL-indicted persons to be referred for trial in another jurisdiction, if an appropriate venue is found.¹⁵²

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.* at 39.

152. *Id.*

