BRIEFLY NOTED*
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RESOLUTIONS, DECLARATIONS, AND OTHER DOCUMENTS

1. **Executive Order — Blocking Property of the Government of Iran and Iranian Financial Institutions (Feb. 6, 2012)**
<http://www.whitehouse.gov/the-press-office/2012/02/06/executive-order-blocking-property-government-iran-and-iranian-financial->

President Obama has issued an Executive Order blocking additional property belonging to the Iranian government and its financial institutions. According to a White House press release, the President has concluded that Iran's conduct and policies are a threat to U.S. national security, foreign policy, and economy.

Thus, according to President Obama, additional sanctions are justified for several reasons, including "the deceptive practices of the Central Bank of Iran and other Iranian banks to conceal transactions of sanctioned parties, the deficiencies in Iran's anti-money laundering regime and the weaknesses in its implementation, and the continuing and unacceptable risk posed to the international financial system by Iran's activities."

2. **Executive Order — Establishment of the Interagency Trade Enforcement Center (Feb. 28, 2012)**
<http://www.whitehouse.gov/the-press-office/2012/02/28/executive-order-establishment-interagency-trade-enforcement-center>

U.S. President Obama recently signed an Executive Order establishing an Interagency Trade Enforcement Center meant to "strengthen[ ] and coordinate[ ] enforcement of U.S. trade rights under international trade agreements and enforcement of domestic trade laws." The Center will be established within the Office of the United States Trade Representative ("USTR"), and the Center will be the primary forum within the Federal Government for coordination of enforcement of U.S. trade rights between the USTR and numerous other U.S. agencies, including the Departments of State, Treasury, Justice, and Homeland Security.

JUDICIAL AND SIMILAR PROCEEDINGS

1. **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 (Feb. 1, 2012)**
<http://www.icj-cij.org/docket/files/146/16871.pdf>

The International Court of Justice ("ICJ") has delivered an advisory opinion *in Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization Upon a Complaint Filed Against the International Fund for Agricultural Development.* The Court ruled that it had jurisdiction to issue the advisory opinion and that the Administrative Tribunal ("Tribunal") of the International Labour Organization ("ILO") had jurisdiction to hear an employment claim against the International Fund for Agricultural Development ("IFAD"), a special UN agency, by an employee working for an organization hosted by the IFAD.

The request for an advisory opinion was made by IFAD and concerns the validity of a judgment issued in 2010 by the Tribunal and relating to an employment contract between Ms. Saez García and the IFAD. Allegedly Ms. García accepted a two-year fixed-term contract with IFAD to serve as a Programme Officer in the Global Mechanism—an organization created under the auspices of the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification and hosted by the IFAD. Ms. García's contract was extended twice; however, in 2005, she was informed that her contract would not be renewed because her position was eliminated. She challenged that decision by filing an appeal with the Joint Appeals Board of the IFAD, which recommended her reinstatement. However, that recommendation was rejected by IFAD's President. She then filed a complaint with the ILO Tribunal, which set aside the President's decision to not reinstate Ms. García and ordered that costs and damages be paid to Ms. García. In April 2010, the Executive Board of the IFAD requested an advisory opinion from

* As a service to our readers we include, when available, an internet address to these documents or to their sources. Web addresses change frequently, but are correct as of the date of ILM's publication.

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the ICJ regarding the validity of the Tribunal's judgment.

The Court first observed that its mandate to issue an advisory opinion is rooted in the UN Charter, the Statute of the Court, and Article XII of the Annex to the Statute of the ILO Tribunal. The Court also relied on the Relationship Agreement between the UN and IFAD, which addressed the issue of jurisdiction: "[T]he Court concludes that, in terms of the relevant provisions of the Charter, the Statute of the Court and the authorization given under the Relationship Agreement, the Fund [IFAD] has the power to submit for an advisory opinion the question of the validity of the decision given by the ILOAT [ILO Administrative Tribunal] in its Judgment No. 2867 and that the Court has jurisdiction to consider the request for an advisory opinion."

The real issue, according to the Court, was not whether it had jurisdiction to review the request to issue an advisory opinion, but the scope of that jurisdiction. The Court concluded that its power to review a judgment of the ILO Tribunal was limited to two situations: 1) when the Tribunal wrongly confirmed its own jurisdiction, or 2) when there is fundamental fault in the procedure followed by the Tribunal.

Relying on the Statute of the ILO Tribunal, which was authorized to hear IFAD employee-related complaints, the Court had to determine whether Ms. García was in fact employed by IFAD. The Court concluded that she was an IFAD employee because, *inter alia*, she was subject to IFAD staff regulations and rules. Thus, she could bring her employment claim before the Tribunal, and her claims were "within the scope of allegations of non-observance of her terms of appointment and of the provisions of the staff regulations and rules of the Fund, as prescribed by . . . the Statute of the Tribunal." Finally, having also found that the ILO Administrative Tribunal "was entirely justified in confirming its jurisdiction," and failing to find "any fundamental fault in the procedure committed by the Tribunal," the Court concluded that the Tribunal's decision was valid.

2. **Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute—Case 1 (William Samoei Ruto, Henry Kiprono Kosgey, and Joshua Arap Sang) and Case 2 (Francis Kirimi Muthaura, Uhuru Muigai Kenyatta, and Mohammed Hussein Ali) (Jan. 23, 2012)**
<http://www.icc-cpi.int/iccdocs/doc/doc1314535.pdf>
<http://www.icc-cpi.int/iccdocs/doc/doc1314543.pdf>
<http://www.icc-cpi.int/NR/exeres/7036023F-C83C-484E-9FDD-0DD37E568E84.htm>

The Pre-Trial Chamber II of the International Criminal Court ("ICC") has confirmed charges against four of the six suspects in two separate cases (Case 1 and Case 2) stemming from the post-election violence in Kenya. The Chamber concluded that there are "substantial grounds to believe" that the crimes charged by the prosecutor were committed in Kenya and that the four suspects were responsible for them.

The situation in Kenya has occupied the Chamber's attention for months. At the end of 2011, the Chamber issued two decisions on Kenya's challenges to the admissibility of the cases before the ICC. The Chamber rejected Kenya's arguments that the ICC should relinquish its jurisdiction over crimes in Kenya to Kenyan domestic courts under the principle of complementarity. This decision was recently upheld by the Appeals Chamber.

In Case 1, *Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang,* the Chamber considered allegations that suspects committed crimes against humanity—including murder, deportation or forcible transfer, and persecution—in Kenya between December 2007 until the end of January 2008. Ruto and Kosgey were charged as indirect co-perpetrators, while Sang was charged as having contributed to the crimes against humanity.

Reviewing the evidence presented, the Chamber found that the prosecutor had met the evidentiary threshold under the Rome Statute to confirm charges against Ruto and Sang, but not against Kosgey. The Chamber concluded that substantial grounds existed to believe that Ruto and Sang committed crimes against individuals belonging to a particular political party and that these crimes resulted in the death of hundreds and the displacement of thousands of civilians. With respect to Kosgey, the Chamber ruled that the evidence presented was insufficient to demonstrate his alleged role in the perpetration of the crimes.

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In Case 2, *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali,* the Chamber considered evidence on crimes against humanity, including murder, deportation or forcible transfer, rape and other forms of sexual violence, other inhumane acts, and persecution. Muthaura and Kenyatta were charged as indirect co-perpetrators, while Ali was charged as having contributed to the alleged crimes.

The Chamber was satisfied that the prosecutor's evidence substantiated that both Muthaura and Kenyatta are criminally responsible for the alleged crimes. Relying on the evidence presented, the Chamber concluded that there were "substantial grounds to believe" that suspects attacked civilians considered to be supporters of a specific political party in Kenya. Like Case 1, these attacks resulted in a large number of killings, displacement of thousands of people, rape, severe physical injuries, and mental suffering. With respect to Ali, however, the Chamber found the evidence presented was insufficient to confirm the charges.

The four suspects against whom charges were confirmed will be committed to trial. In the Court's supplemental press release, the Chamber expressed its "utmost desire that the decisions issued by this Chamber today, [will] bring peace to the people of the Republic of Kenya and prevent any sort of hostility. The decisions are the result of intensive and committed judicial work of the Chamber, conducted impartially, independently and conscientiously in the interests and in the service of justice."

3. Jelena Rasic, Contempt Judgement (Feb. 7, 2012)

<http://www.icty.org/x/cases/contempt_rasic/tjug/en/120207_summary.pdf>

Trial Chamber III of the International Criminal Tribunal for the former Yugoslavia ("ICTY") has sentenced Jelena Rasic, former case manager on the defense team Milan Lukic, a Bosnian Serb (Milan Lukic) convicted to life for atrocities committed in Bosnia, to twelve months imprisonment for contempt of the tribunal. The Chamber stated that Rasic will be given credit for time already spent in detention and that the remaining eight months of the sentence will be suspended for two years, which means that she will not have to spend time in prison unless she is convicted in the next two years for another crime punishable with imprisonment. Rasic was convicted on January 31, 2012, of having knowingly and willfully interfered with the administration of justice by procuring a false witness statement from a witness in exchange for 1,000 EUR in cash.

Rasic allegedly approached an individual in 2008, requesting that he sign a pre-written statement regarding events in Bosnia of which her client was accused. The approached individual never witnessed the events and had no knowledge of the events described in the statement. In return, Rasic paid the false witness 1,000 EUR. She also promised him an additional payment if he were to testify at Lukic's trial. Moreover, she asked the same false witness to procure two additional witnesses, which he did. He was eventually convicted of contempt of the tribunal in 2010 and sentenced to three months imprisonment.

In 2010, Rasic was indicted, and she pled not guilty to all charges.

In the sentencing statement, the Chamber referred to Rule 77(G) of the Rules of Procedure and Evidence, which provides that the maximum penalty for contempt of the tribunal is a term of imprisonment not exceeding seven years, or a fine not exceeding 100,000 EUR, or both. The Chamber observed that "[t]he crimes which Jelena Rasic has admitted to having committed are grave. Procurement of false evidence in any situation amounts to direct interference with the administration of justice. When perpetrated before an international criminal jurisdiction, such as the Tribunal, such interference has far-reaching consequences." The Chamber also concluded that the defendant's position of trust and her repeated illegal conduct amounted to aggravating circumstances. On the other hand, the Chamber stressed that Rasic "was not, and could not, have been the original instigator of the broader criminal conduct of procuring false evidence. It is obvious that another or others connected to the *Lukic* case in some way were responsible for recruiting her as a relatively young and inexperienced person to commit these offences." The Chamber added that this factor, along with her young age at the time the offenses were committed, were mitigating circumstances. Taking these circumstances into consideration, the Chamber concluded that a suspended two-year sentence was fair and justified.

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