

International Courts & Tribunals Interest Group Newsletter

Introductory Note

For about a decade now, scholars have decried the “backlash” against international courts and tribunals. States, it is said, are no longer willing to accept that an independent international court or tribunal may declare they have violated their international obligations. States, it is claimed, wish to “control” the adjudicatory process, which often would seem to mean wanting to be party and judge at the same time, and even change the rules as the adjudicatory process is ongoing so as to secure a win in the outcome. States have indeed withdrawn their consent to the jurisdiction of several adjudicatory mechanisms, from investor-State arbitration to the International Criminal Court, and sabotaged the functioning of the WTO Appellate Body.

Yet there are also hopeful signs, where international adjudication is still, in spite of everything, seen as the best way to solve international disputes and ensure accountability of both States and, in some cases, private actors. Examples include the ongoing work to hold Russia and its president accountable for the situation in Ukraine, as well as the decision of the EU to rely on the dispute settlement mechanism of the WTO to solve the trade war between China and Lithuania, and the patent disagreements in the technology sector.

The ICT interest group will continue to scrutinise the functioning of international courts and tribunals in our upcoming Works-in-Progress Conference to be conducted virtually on Friday, February 3, 2023 and hosted by the UIC Law School in Chicago, Illinois for which you can find the Call for Abstracts below. Further in this newsletter, you can find a discussion of various developments as well as notable decisions and recently published scholarship on this topic. The newsletter closes with a list of opportunities for our members, in the form of awards, grants and prizes, conferences, webinars and programs, and job opportunities.

-Freya Baetens & Massimo Lando, Co-Chairs

Upcoming ICTIG Events

2023 Works-in-Progress Conference

The ICTIG is excited to announce its annual Works-in-Progress Conference to be conducted virtually on Friday, February 3, 2023 and hosted by the UIC Law School in Chicago, Illinois. We are currently accepting submissions for any works-in-progress on topics related to international courts or tribunals. Additional information is available in the Opportunities section of this newsletter as well as in the call for abstracts. We hope you will consider submitting!

INSIDE THIS ISSUE

Upcoming ICTIG Events

1

Developments at International Courts & Tribunals

2

New Publications

4

Notable Judgments & Decisions

5

Opportunities

9

International Courts & Tribunals Interest Group

CO-CHAIRS

Freya Baetens
Massimo Lando

EDITORS

Sara Ochs
Lisa Reinsberg

Views contained in this publication are those of the authors in their personal capacity. The American Society of International Law and this Interest Group do not generally take positions on substantive issues, including those addressed in this periodical.



Developments at International Courts & Tribunals

IACtHR Resumes In-Person Visiting Professional and Internship Programs

On September 5, the Inter-American Court of Human Rights welcomed, in person, the 15 interns and visiting professionals based at the Court between September and December 2022. Their induction marked a resumption of the Internship and Professional Visits Program, which had been suspended since 2020 because of the COVID-19 pandemic. While this cohort had been selected prior to the pandemic, the Court will accept new applications for the May-August 2023 period. Meanwhile, the Court has announced it will conduct its 2023 sessions in a hybrid format.

AfCHPR Judges Visit ICJ and ICC

On September 27, a delegation of the African Court on Human and Peoples' Rights recently carried out visits to the International Court of Justice and International Criminal Court. Judges and officers of the AfCHPR met with ICJ President Judge Joan E. Donoghue, other ICJ judges, and the ICJ Registrar, and discussed areas of mutual interest and cross-fertilization. The same day, the delegation met with ICC Vice-President, Judge Luz del Carmen Ibáñez Carranza, and senior staff in the Office of the Prosecutor and Registry, to discuss a range of issues. Such judicial dialogues form part of the AfCHPR's 2021-2025 strategic plan and are aimed at improving AfCHPR procedure and practice, as well as advancing implementation of its judgments. Additionally, the AfCHPR held a joint retreat with the African Commission on Human and Peoples' Rights from October 10 to 14, in Addis Ababa, Ethiopia.

ECOWAS Court of Justice Welcomes Two New Judges & Chief Registrar

The Court of Justice of the Economic Community of West African States swore in two judges on October 6, and welcomed a new Chief Registrar on October 12. Sengu Mohammed Koroma (Sierra Leone) and Claudio Monteiro Goncalves (Cape Verde) began their four-year terms on October 14, and replace justices Keikura Bangura (Sierra Leone) and Januaria Tavares Silva Moreira Costa (Cape Verde), whose terms have ended. The new Chief Registrar, Dr. Yaouza Ouro-Sama, replaces Tony Anene-Maidoh, who had held the position for nearly two decades.

CJEU Shares Video on Access to Information, Including Streaming Service

In October, the Court of Justice of the European Union published a video on access to information at the European Court of Justice. The video addresses methods for obtaining information about the Court and its outputs, and refers to the streaming service through which the public can view delivery of the Court of Justice's judgments and of Advocates General's opinions in real time, as well as delayed broadcasts of Grand Chamber hearings. The Court initially launched the streaming service in April 2022, when it announced that the broadcast of Grand Chamber hearings would be time-delayed for an initial six-month pilot period.

IACtHR Visits Argentina to Supervise Implementation of Judgments

In its seventh-ever country visit to monitor compliance with its judgments, the Inter-American Court of Human Rights visited Argentina from October 24 to 26. During its visit, the Court's delegation met with State authorities and other actors and held private hearings on the implementation of judgments in five cases concerning Argentina. Those cases raised a range of issues related to criminal justice, including conditions of detention, enforced disappearances, racial profiling in policing, arbitrary detention, and the criminal prosecution of minors. As part of the visit, the Court took part in a seminar on Inter-American standards on persons deprived of liberty.

UN Member States Elect Leonardo Nemer Caldeira Brant to ICJ

On November 4, the UN General Assembly and Security Council elected Leonardo Nemer Caldeira Brant to the International Court of Justice. Judge Brant will succeed ICJ Judge Antônio Augusto Cançado Trindade, who passed away in May 2022, and will complete the remainder of Judge Trindade's term, which will end on February 5, 2027. Judge Brant, who is of Brazilian nationality, is a professor of international law at the Federal University of Minas Gerais, as well as the founder and president of the International Law Center in Brazil.



Developments at International Courts & Tribunals —continued from page 2

Supreme Court of Finland Requests ECtHR Advisory Opinion on Parental Rights

On November 8, the European Court of Human Rights accepted a request for an advisory opinion from the Supreme Court of Finland, pursuant to Protocol 16 to the European Convention on Human Rights. The case concerns the rights of a biological mother whose child is adopted by a third party after becoming an adult. The Finnish Supreme Court is particularly interested in whether the biological mother has to be heard in such proceedings, in view of the rights to respect for private and family life and due process under the ECHR.

ITLOS Strikes M/T “Heroic Idun” Case Following Withdrawal of Application

On November 9, the Marshall Islands filed an application to the International Tribunal for the Law of the Sea (ITLOS) against Equatorial Guinea for the prompt release of the ship M/T “Heroic Idun.” The ship had been detained by Equatorial Guinea since August 12, 2022, when the vessel had been, according to the flag State of the Marshall Islands, operating in the Exclusive Economic Zone of Sao Tome & Principe. The crew of 26 has been detained since then, in part on the ship and in part on land. However, the Marshall Islands withdrew the application a few days later, and the case was struck from the Tribunal’s list as it became known that, according to the Marshall Islands, Equatorial Guinea had transferred the vessel into the jurisdiction of Nigeria.

ICC Prosecutor Seeks to Move Forward with Case Against Joseph Kony

On November 24, Karim Khan, Prosecutor of the International Criminal Court filed a request with the Pre-Trial Chamber II to hold a hearing on the confirmation of charges against Joseph Kony, the founder and leader of the Lord’s Resistance Army. The ICC initially issued an arrest warrant for Kony in 2004 as part of the Situation in Uganda for 33 counts of war crimes and crimes against humanity. The warrant has never been executed, as neither the ICC Prosecutor’s Office nor the Registry has been able to locate and apprehend him. Accordingly, Prosecutor Khan now seeks to move forward with con-

firmed charges against Kony in his absence. This is the first time any ICC Prosecutor has sought to confirm charges against a defendant *in absentia*.

EACJ Continues Off-Site Sessions in Uganda

In continuation of a practice adopted one year ago, the East African Court of Justice announced it would hold a “rotational sitting” in a Member State, away from its headquarters in Tanzania. The EACJ held its November-December 2022 session in Kampala, Uganda at the premises of the Commercial Court. The EACJ aims to improve awareness of the Court across the region, in part because individuals can access the Court without previously exhausting domestic remedies.

IACtHR Adopts Judicial Code of Ethics

On December 2, the Inter-American Court of Human Rights announced the adoption of a code of ethics for its members. The Court adopted the Code of Ethics, currently only available in Spanish, on October 10. The document outlines principles of independence, impartiality, integrity, prudence, confidentiality, loyalty, and diligence, while also addressing limitations on judges’ freedom of expression and extrajudicial activities. The code is intended to provide guidance to judges, who are advised to consult the tribunal president in cases of doubt. The Code of Ethics will enter into force on January 1, 2023.

ICC Defense Staff Strike

On December 5, International Criminal Court defense staff members launched a labor strike over their working conditions and pay. Defense support staff members are contesting their limited rights and lower wages as compared to staff in the Office of the Prosecutor. Following the strike announcement, defense counsel sought remuneration equal to that of the prosecution and separately requested the adjournment of hearings in the *Yekatom and Ngaïssona Case*. Trial Chamber V denied the adjournment while admonishing counsel for having “misused” the proceedings “to pursue financial and labour law related agendas.” In November, defense members began wearing burgundy-colored ribbons in protest, before being prohibited from doing so in ICC hearings. At the



Developments at International Courts & Tribunals —continued from page 3

same time, ICC defense staff and victims representatives were reportedly not allowed to attend the 21st session of the Assembly of States Parties to the Rome Statute.

ICC Office of the Prosecutor Issues Annual Report

On December 5, International Criminal Court Prosecutor Karim Khan presented the ICC Office of the Prosecutor's Annual Report. The report is titled "Towards a More Just World," and lays out the Office of the Prosecutor's thematic focuses and achievements since Prosecutor Khan's term began in June 2021. While this is the first time the Office of the Prosecutor has issued a report of this type, Prosecutor Khan states in the report that he intends to continue publishing similar reports on an annual basis.

21st Session of the Assembly of States Parties to the Rome Statute

The 21st session of the Assembly of States Parties (ASP) to the Rome Statute of the ICC met in the Hague from December 5-10. In October, the Court issued a Report on the Activities of the ICC between September 2021 to

September 2022 for review and discussion by the ASP. The report identified this period as the "most active period of work of the Court during its 20 years of existence," a sentiment that was echoed by ICC Judge President Piotr Hofmański in his speech during the ASP Session's opening ceremony. During the 21st Session, the ASP discussed key challenges facing the ICC and voted on resolutions regarding various issues set forth in the Session's agenda.

ITLOS Receives Advisory Opinion Request on Climate Change

On December 12, the International Tribunal for the Law of the Sea received an advisory opinion request from the Commission of Small Island States on Climate Change and International Law. The request seeks the Tribunal's guidance on the obligations of States parties to the UN Convention on the Law of the Sea "to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change" and "to protect and preserve the marine environment in relation to climate change impacts." ■

New Publications

Articles, Essays, Book Chapters & Book Reviews

ICTIG members have recently published articles, essays, book reviews, and book chapters, including the following:

- Ziv Bohrer and Benedikt Pirker, *World War I: A Phoenix Moment in the History of International Criminal Tribunals*, *European Journal of International Law* (2022).
- Giulia Bosi, *Tobacco Control and The Council of Europe: The Potential and Limits of the Collective Complaints Procedure of the European Social Charter*, *9 European Journal of Health Law* 1 (2022).
- Jeffrey L. Dunoff and Mark A. Pollack, *The Road Not Taken: Comparative International Judicial Dissent*, 116 (2) *American Journal of International Law* 340 (2022).

- Md. Rizwanul Islam, Letter to the Journal, *Not an Overreach of the Court's Jurisdiction, Putting Erga Omnes into Motion: In Partial Response to Xiao Mao's Comment on the ICJ's Judgment on the Preliminary Objections in The Gambia v. Myanmar*, 21 *Chinese Journal of International Law* 3 (2022).
- Mark A. Pollack, *Court-Curbing in Geneva: Lessons from the Paralysis of the WTO Appellate Body*, in *Governance: An International Journal of Policy, Administration, and Institutions* (2022).

Books

- Chiara Giorgetti and Mark A. Pollack, eds., *Beyond Fragmentation: Cross-Fertilization, Cooperation, and Competition among International Courts and Tribunals* (Cambridge University Press 2022).

Notable Judgments & Decisions

AfCHPR Holds AU States Have Not Violated Self-Determination of Sahrawi People

Lisa Reinsberg, International Justice Resource Center

On September 22, the African Court on Human and Peoples' Rights (AfCHPR) adopted its judgment in the case of *Bernard Anbataayela Mornah v. Benin et al.*, concerning the alleged failure of multiple States parties to the African Charter on Human and Peoples' Rights (ACHPR) to "safeguard the territorial integrity and independence of the Sahrawi Arab Democratic Republic." While the Sahrawi Arab Democratic Republic (SADR) is not universally recognized, it is a Member State of the African Union and a party to the ACHPR. The complaint, submitted by a Ghanaian politician, alleged that the Sahrawi people's rights have been violated as a result of the failure of Benin, Burkina Faso, Côte d'Ivoire, Ghana, Mali, Malawi, Tanzania, and Tunisia to stop Morocco's admission to the African Union, despite its continued occupation of SADR territory in Western Sahara. The Court granted SADR and Mauritius leave to intervene in the proceedings. Benin did not participate.

The AfCHPR found the complaint admissible, in part upon determining that several exceptions applied to the exhaustion of domestic remedies requirement. On the merits, the AfCHPR analyzed the respondent States' conduct in light of Article 20(3) of the Organization of African Unity Charter which enshrined a right of all peoples "to the assistance of the States parties...in their liberation struggle against foreign domination." While emphasizing that Morocco's continued occupation of the SADR is incompatible with the Sahrawi people's self-determination, the Court found that the respondent States' duty to assist "does not require States to take a list of specific actions or measures." In light of the fact that the respondent States are supporting diplomatic efforts via the AU and UN, the Court could not conclude they had failed to fulfill this obligation. Moreover, the Court found that an individual State's vote concerning AU membership "cannot in itself *a priori* constitute a breach of its international obligation," given that membership is "essentially the decision of the Assembly, which has a distinct legal personality." Accordingly, the AfCHPR concluded that the alleged rights violations could not be attributed to the respondent States. Nonetheless, the Court underscored

the responsibility of all AU Member States "to find a permanent solution to the occupation and to ensure the enjoyment of the inalienable right to self-determination of the Sahrawi people."

AfCHPR Finds Violations in the Tunisian President's Consolidation of Power

In its September 22 judgment in the case of *Ibrahim Ben Mohamed Ben Ibrahim Belguith v. Tunisia*, the African Court on Human and Peoples' Rights held that Tunisia violated three articles of the African Charter on Human and Peoples' Rights by passing several presidential decrees which, *inter alia*, suspended the powers of Parliament and lifted the immunity of its members. The applicant, a Tunisian lawyer, argued that the presidential decrees unlawfully abrogated the Constitution, halted the democratic process, and provided the president with significantly increased powers.

The Court dismissed Tunisia's objections to jurisdiction, finding that the applicant had instituted a public interest case, and therefore did not need to demonstrate a personal interest in an application to access the Court. Rather, in circumstances of alleged human rights violations, the Court "allow[s] any person to bring applications to the Court on others' behalf without a need to demonstrate victimhood or a direct vested interest in the matter."

On the merits, the Court found that Tunisia had violated the applicant's right to be heard under Article 7(1)(a) of the Charter, right to participate in the conduct of public affairs in his country under Article 13(1) of the Charter, and Article 1 of the Charter, which states that the Member States of the Charter "shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them." On the right to be heard, the Court found that at the time the application was filed, the Tunisian Constitutional Court was not in operation, and there was "no other court or authority in the Respondent State that could consider constitutional disputes relating to the powers of the President." Because the applicant had no domestic legal means of challenging the presidential decrees, he had been deprived of a right to be heard.



Notable Judgments & Decisions —continued from page 5

The Court held that the right to participate in public affairs “confers on all citizens the right to be involved in the government of their country directly or through their freely chosen representatives.” The Court found that the Tunisian Constitution permitted the president to issue decrees “in the event of imminent danger threatening the nation’s institutions or the security or independence of the country,” but found that there was nothing on record showing that any such danger existed, and that, accordingly, the decrees were not promulgated in keeping with the Constitution. The Court added that the decrees “disproportionately disrupted the work of the government including that of elected institutions.” The Court thus ordered Tunisia to repeal the decrees in force and to “put in place the Constitutional Court as an independent judicial body.”

CJEU Finds German Data Retention Law Incompatible with EU Law

Stefan Kirchner, Professor, University of Lapland, Rovaniemi, Finland

The Grand Chamber of the Court of Justice of the European Union (CJEU) ruled on September 20, 2022 in two joined cases (C-793/19 and C-794/19) on requests by Germany’s Federal Administrative Court (the Bundesverwaltungsgericht) for a preliminary ruling regarding the interpretation of Article 15(1) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector, read in light of the Charter of Fundamental Rights of the European Union and Treaty on European Union. The case of *Bundesrepublik Deutschland v. SpaceNet AG and Telekom Deutschland GmbH* raised the question of whether national law that demands the retention of location data by telecommunication providers for national security purposes is compatible with EU law.

The Grand Chamber of the European Union concluded that Article 15(1) of Directive 2002/58/EC “must be interpreted as meaning that: it precludes national legislative measures which provide, on a preventative basis, for the purposes of combating serious crime and preventing seri-

ous threats to public security, for the general and indiscriminate retention of traffic and location data.” The Court explicitly allowed specific measures that are less far-reaching and that are based on necessity. Merely preventative norms like the one at the center of the national court proceedings are not compatible with existing EU law.

EACJ Rejects Complaint by Pastoralists Allegedly Evicted from Serengeti National Park

Stefan Kirchner, Professor, University of Lapland, Rovaniemi, Finland

On September 30, the East African Court of Justice (EACJ) adopted its judgment in the case of *Ololosokwan Village Council et al. v. Attorney General of Tanzania*, concerning a dispute regarding the displacement of four villages in the area of the Serengeti National Park. These disputes first arose in 2012, and in 2017 the government of Tanzania required the village communities to move away as they were located, in the opinion of the respondent government, on the territory of the national park. In the villages’ view, the land in question was outside the national park and was their ancestral homeland that had been used by these communities for a long time. Witnesses stated that the evictions involved violence against persons and property, including the burning of homes and physical violence against local residents.

The Court, however, found that the applicants had failed to prove that their villages had actually been located outside the territory of the national park and that the authorities had actually used violence to displace their inhabitants. The Court found the factual allegations to be inconsistent or unsupported and inadequate to meet the applicants’ burden of proof. For example, a land boundary survey commissioned by the applicants did not take into account the officially-proclaimed boundaries of the national park. Accordingly, the Court held that no violation of EAC standards had been shown. Providing sufficient evidence for traditional forms of land use has been a challenge before, for example in the case *Handölsdalen Sami Village and Others v. Sweden* decided by the European Court of Human Rights in 2009.

—continued on page 7



Notable Judgments & Decisions —continued from page 6

IACtHR Holds Brazil Responsible for Post-Ratification Violations in Investigation of Rights Defender's 1982 Death

Lucía Solano

In a [judgment](#) (Spanish only) notified on October 4, 2022 in the *Case of Sales Pimenta v. Brazil*, the Inter-American Court of Human Rights (IACtHR) found the State of Brazil internationally responsible for the violation of rights to a fair trial, judicial protection, and the right to truth and humane treatment to the detriment of the family of human rights defender Gabriel Sales Pimenta, as a result of the State's serious shortcomings in the investigation into his violent death and the situation of impunity in which the homicide remains to date. This led the Court to conclude, *inter alia*, that Brazil did not comply with its obligation to act with enhanced due diligence in the investigation of the murder of Mr. Sales Pimenta, in violation of Articles 8(1), 25 and 1(1) of the American Convention.

In its judgment, the Court indicated that in cases of attacks against human rights defenders, States have a reinforced duty of due diligence regarding the investigation of the events. The Court further highlighted that the work of human rights defenders is essential for strengthening democracy and the rule of law and indicated that violence against them has a chilling effect, especially when crimes go unpunished. In this regard, the Court reiterated that the threats and attacks on the integrity and life of human rights defenders and the impunity of those responsible for these acts are particularly serious because they have an effect not only individually, but also collectively. Due to these violations, the Court ordered various measures of reparation, including carrying out a public act of acknowledgment of international responsibility and creating and implementing a protocol for the investigation of crimes committed against human rights defenders.

IACtHR Issues Advisory Opinion on Specific Obligations Toward Groups of Detainees, Including LBGTI Persons

Lucía Solano

On October 10, 2022, the Inter-American Court notified [Advisory Opinion OC-29/22](#) of May 30, 2022 (Spanish only)

on differentiated approaches with respect to certain groups of persons in detention, as per a request from the Inter-American Commission on Human Rights. In its opinion, the Court stated that respect for human dignity comprises the general principle of the fair treatment of detainees and that said principle must be read in conjunction with the principle of equality and non-discrimination.

The Court also determined that States must apply a differentiated approach in attending to the special needs of the various population groups in detention to ensure that their term in prison respects their human dignity. The Court considered that, given the specific risk of rights violations against this population due to their particular characteristics and needs, States need to define and implement a set of concrete measures aimed at overcoming the discrimination (structural and intersectional) that affects them. Failure to do so would put the States in violation of Article 5(2) of the American Convention on Human Rights and other specific treaties, possibly resulting in treatment contrary to the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment. In the Advisory Opinion, the Court identified specific obligations regarding the dignified treatment required for the groups of detainees outlined in the consultation, namely: (A) pregnant women, women in labor, postpartum and breastfeeding women, and primary caregivers; (B) boys and girls who live in detention centers with their mothers or primary caregivers; (C) LBGTI people; (D) indigenous peoples; and (E) older people.

ICJ Declines to Modify Provisional Measures in ICERD Dispute between Armenia and Azerbaijan

Stefan Kirchner, Professor, University of Lapland, Rovaniemi, Finland

On October 20, the International Court of Justice issued an [order](#) concerning the provisional measures in force in the dispute between Armenia and Azerbaijan. On September 16, 2021, Armenia initiated proceedings at the ICJ regarding alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) by Azerbaijan in the form of systematic discriminations against Armenians. At the same

—continued on page 8



Notable Judgments & Decisions —continued from page 7

time, Armenia also sought provisional measures aimed at protecting its citizens, which the ICJ granted on December 7, 2021. The ICJ also indicated provisional measures aimed at both Azerbaijan and Armenia with the aim to prevent further deterioration of the conflict.

In light of renewed hostilities in September 2022 and the detention of Armenian citizens by Azerbaijan, Armenia requested the ICJ to amend the provisional measures that it had indicated in December 2021. In its October 20 order, the ICJ rejected this request, finding that circumstances had not changed significantly enough. However, the ICJ used the opportunity to “reaffirm” its earlier measures and to call upon both countries to prevent further escalation.

ICC Authorizes Prosecutor to Resume Investigation in Afghanistan Situation

Sara L. Ochs, University of Louisville Brandeis School of Law

Following more than a two-year deferral, on October 31, Pre-Trial Chamber II of the International Criminal Court (ICC) **authorized** the Office of the Prosecutor to resume its investigation into the Afghanistan Situation. The Afghanistan Situation encompasses crimes against humanity and war crimes committed in Afghanistan and related territories since May 2003, including alleged crimes committed by the Taliban and affiliated terrorist organizations, Afghan National Security Forces, and U.S. intelligence organizations and armed forces. Former ICC Prosecutor Fatou Bensouda requested authorization to open a *proprio motu* investigation into the Afghanistan Situation, which was ultimately **granted** by the ICC Appeals Chamber in March 2020. Shortly thereafter, the Government of Afghanistan sought a **deferral** of the Prosecutor’s investigation under Rome Statute Article 18(2) on grounds that the Government itself would investigate the crimes falling within the scope of the Prosecutor’s investigation. In September 2021, current ICC Prosecutor Karim Khan **requested** authorization to resume its investigation, arguing that changes within the Afghan Government had rendered untenable any prospect of “genuine and effective domestic investigations.”

In granting the Prosecution’s request to resume its investigation, the Pre-Trial Chamber considered materials submitted by the Prosecutor and victims, as well as the Afghan

Government’s previous materials submitted in support of its deferral request; despite invitation, the Government did not submit additional materials in response to the Prosecutor’s request to resume the investigation. Based on these materials, the PTC concluded that Afghanistan “is not presently carrying out genuine investigations and that it has not acted in a manner that shows an interest in pursuing the Deferral Request.” However, in authorizing the Prosecutor to resume investigating the Afghanistan Situation, the PTC also cautioned that its present ruling was preliminary, and did not preclude grants of future challenges by the Afghan Government regarding admissibility or jurisdiction.

ECtHR Finds that the ECHR Does Not Bar Extradition Absent a “Real Risk” of Life Imprisonment Without the Possibility for Parole

In a November 3 **judgement**, the European Court of Human Rights (ECtHR) held in the case of *Sanchez-Sanchez v. United Kingdom* that Article 3 of the European Convention on Human Rights (ECHR) does not bar Member States from extraditing criminal defendants to third States absent a “real risk of a sentence of life imprisonment without parole.”

The applicant, Ismael Sanchez-Sanchez, was accused in the United States of being the head of a drug trafficking organization, a crime that carried a maximum sentence of life imprisonment without the possibility of parole. The applicant was arrested in the United Kingdom, and the UK courts and Secretary of State ordered his extradition to the United States. The applicant then filed an application with the ECtHR, arguing that his extradition would be in breach of Article 3 of the ECHR, which provides that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

The ECtHR had previously held in *Vinter and Others v. United Kingdom* that a sentence of life imprisonment would violate Article 3 if it was “an irreducible life sentence,” i.e., a life sentence without the possibility of obtaining parole. In *Vinter and Others*, the Court had held that the penological justification for a life sentence had to be subject to review after the passage of a certain period of time. The Court in the present case emphasized, however, that *Vinter and*

—continued on page 9

Opportunities

Conferences, Webinars & Programs

iCourts PhD Summer School: June 12-16, 2023

The Centre of Excellence for International Courts (iCourts) will host its 11th PhD Summer School for PhD students working on international courts, bodies, and organizations in their social and political contexts, and welcomes applications through February 10. The Summer School will take place at the Faculty of Law at the University of Copenhagen. Additional details are available on the Summer School [webpage](#).

Calls for Papers

International Conference on Violent Turns: Sources, Interpretations, Responses

The George and Irina Schaeffer Center for the Study of Genocide, Human Rights, and Conflict Prevention and the Center for Critical Democracy at The American University of Paris welcome papers for an international conference on “Violent Turns: Sources, Interpretations, Responses.” The conference will be held on June 21-23, 2021 at the American University of Paris, and abstracts are due by December 15. Further information is available in the [call for papers](#).

—continued on page 10

Notable Judgments & Decisions —continued from page 8

Others was not an extradition case, and that the judgment establishes some procedural safeguards for a Contracting State to avoid a breach of Article 3 that do not arise in the extradition context.

Therefore, the Court set out a two-step test for use in the extradition context. First, the applicant must present “evidence capable of proving that there are substantial grounds for believing that, in the event of conviction, there is a real risk of a sentence of life imprisonment without parole.” Second, the Court must determine whether the requesting State has a “mechanism of sentence review which allows the competent authorities there to consider whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds.”

Applying the first step of the test, the Court found that the applicant had failed to show that there was a real risk that a sentence of life imprisonment without parole would be imposed. The Court noted that life sentences were imposed in less than 0.3% of all drug trafficking cases in the United States, and the applicant failed to demonstrate that defendants with similar records to the applicant received life sentences without parole. The Court therefore found that it did not need to apply the second step of the test, and held that the applicant’s extradition to the United States would not violate Article 3 of the ECHR.

ECtHR Finds Violation in Prisoner’s Transfer Resulting in Ineligibility for Parole

Stefan Kirchner, Professor, University of Lapland, Rovaniemi, Finland

On November 10, the European Court of Human Rights adopted its judgment in *Kupinskyy v. Ukraine*, concerning the principle of *nulla poena sine lege* in the case of an individual sentenced to life imprisonment in one country, but transferred to serve that sentence in another country. The applicant is a Ukrainian citizen who was sentenced to life in prison in Hungary in 2002 after having been arrested in 1999. In 2007, he was transferred to his home country in accordance with the Convention on the Transfer of Sentenced Persons. In Ukraine, the Hungarian judgment was accepted by the relevant court in 2007, enabling the applicant to serve his sentence in his home country. However, unlike Hungary, Ukraine does not allow prisoners who have been given life sentences to seek parole. This meant that the penalty faced by the applicant in Ukraine became significantly different from that he received in Hungary.

The case now decided by the European Court of Human Rights (ECtHR) had its origin in a 2016 application for parole that was rejected by courts in Ukraine. The ECtHR found in its judgment of November 10 that Article 7 ECHR is applicable to such a situation and concluded that the norm had been violated. The Court also found a violation of Article 3 (humane treatment) of the ECHR. ■



Opportunities —continued from page 9

Authoritarian States in Human Rights Institutions: Russia and the Council of Europe

On March 13-14, 2023, a workshop will be hosted at the University of Oslo on the Russian experience in the Council of Europe and the lessons to be learned for the international institutions focused on human rights. The submission deadline is December 20, and additional information is available in the [call for abstracts](#).

The European Court of Human Rights Facing Populism and Authoritarianism: Time for System Change?

PluriCourts is seeking paper submissions for a workshop on populism, authoritarianism and the response of the European Court of Human Rights to be held on April 27-28, 2023 at the PluriCourts premises in Oslo. Paper abstracts may be submitted until December 26. Additional details on the workshop and further information on abstract submission is available in the [call for papers](#).

Combating Conflict-Related Sexual Violence – Comparative Insights on International and National Capacities

The Freie Universität Berlin Department of Law is seeking abstract submissions for a two-day workshop organized by Dr. Ajla Škrbić on the topic “Combating Conflict-Related Sexual Violence – Comparative Insights on International and National Capacities” which will take place on May 12-13, 2023 in Berlin. The workshop is aimed at bringing together scholars and practitioners working on conflict-related sexual violence from different disciplinary perspectives, especially with a focus on gender. Abstracts are due January 1, 2023 and additional details are available in the [call for papers](#).

International Courts & Tribunals 2023 Works-in- Progress Conference

The ICTIG is excited to announce its annual Works-in-Progress Conference to be conducted virtually on Friday, February 3, 2023 and hosted by the UIC Law School in Chicago, Illinois. Submissions on any topic related to international courts or tribunals should be emailed to Advisory Board Member Professor Stuart Ford at fords@uic.edu until January 6, 2023. Further information is available in our [call for papers](#).

Developing Robust and Sustainable Ocean Regimes for Uncertain Futures

The Singapore Management University, Centre for Commercial Law in Asia is seeking papers for a hybrid workshop to be held at the Yong Pung How School of Law at the Singapore Management University on April 28, 2023. The workshop will be centered on exploring how global legal regimes should be developed to achieve a peaceful, healthy and sustainable ocean in uncertain futures. Abstracts must be submitted by January 15, 2023, and additional details are available in the [call for papers](#).

Progress and International Law - A Cursed Relationship?

The Working Group of Young Scholars in Public International Law and the German Society of International Law invite the submission of papers for their joint conference on Progress and International Law to be held at the University of Cologne on September 22-23, 2023. Abstracts must be submitted by January 16, 2023, and additional details are available in the [call for abstracts](#).

2023 ESIL Annual Conference

The European Society of International Law is accepting submissions of abstracts, in French or English, for its 2023 Annual Conference on the topic, “Is International Law Fair?” The conference will take place in Aix-en-Provence, France from August 30 to September 2, 2023, in a hybrid format. Submissions are due by January 31, 2023 and additional information is available in the [call for papers](#).

Law, Society and Digital Pasts, Presents and Futures

The Research Committee on Sociology of Law will host its annual conference in Lund, Sweden from August 30 to September 1, 2023 on the theme “Law, Society and Digital Pasts, Presents and Futures.” Abstracts will be accepted until February 28, 2023, and further information is available on the conference [website](#).

—continued on page 11

Opportunities —continued from page 10

Job Postings & Other Opportunities

International Lawyers, Investigators & Experts in Conflict Related Sexual Violence, Global Rights Compliance

Global Rights Compliance seeks to recruit 6 full-time international lawyers, investigators and criminal justice policy experts with practical experience of working on Conflict Related Sexual Violence (CRSV) cases and related policy and strategic issues. The consultancy will commence as soon as possible, and run for five months, and the post will be based in Kyiv. Applications must be submitted by December 15, and additional details are available in the [job posting](#).

Associate Legal Officer (P2), Independent Investigative Mechanism for Myanmar

The IIMM is seeking to fill two Associate Legal Officer positions. These positions are located in the Independent Investigative Mechanism for Myanmar, based in Geneva, Switzerland, within the Collection, Analysis and Sharing Section. Application details are included in the [posting](#), and applications are due December 25.

Associate Legal Officer (P2), UN International, Impartial and Independent Mechanism for Syria

The UN IIMM is seeking an Associate Legal Officer to work in the Office of the Assistant Secretary-General of the Mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under International Law committed in the Syrian Arab Republic since March 2011. Applications are due December 29, and further information is available in the [posting](#).

UN Representative and Senior Legal Advisor, International Commission of Jurists

The International Commission of Jurists is seeking a full-time UN Representative and Senior Legal Advisor to be based in Geneva, Switzerland and begin in February/March 2023. Interested applicants should submit their materials by January 4, 2023. Further details are available in the [job posting](#).

Executive Director, HURIDOCS

HURIDOCS (Human Rights Information and Documentation Systems) is seeking an Executive Director who will work closely with the Board to take the organization into the next stage of development. Applications are due January 6, 2023. See the [posting](#) for additional details.

Various Positions, Kosovo Specialist Chambers

The Kosovo Specialist Chambers has issued a Call for Contributions for staff members, which includes various vacancies for legal positions. Further information is available on the Court's [website](#), and all applications must be submitted by January 13, 2023.

Deputy Executive Director, ICCA

The International Council for Commercial Arbitration (ICCA) is seeking a Deputy Executive Director to be based in the Hague and to begin in April-May 2023. Applications are due by January 31, 2023. Further information, including eligibility criteria and application instructions is available in the [job announcement](#).

Judicial Fellowship Program, International Court of Justice

The International Court of Justice has issued a call for applications for its 2023-2024 Judicial Fellowship Program. The Judicial Fellows work on a full-time basis under the supervision of a Member of the Court and alongside the primary legal assistant of the judge. Applications are due by February 5, 2023. Further information, including eligibility criteria, is available in the [call for applications](#). ■

We invite submissions to the newsletter on an ongoing basis, and encourage members to contribute case summaries, news items, publications, relevant announcements and opportunities, and their own professional news for inclusion in the next issue. For summaries and news items, please limit submissions to 300 words or fewer and indicate how you would like to be credited. All submissions may be sent via email with the subject "ICTIG newsletter submission" to Sara Ochs (sara.ochs@louisville.edu) and Lisa Reinsberg (lisa@ijrcenter.org).