

International Courts & Tribunals Interest Group Newsletter

Introductory Note

We are pleased to share with you our Summer 2023 ICTIG Newsletter! This issue covers some of the most important developments from a range of international courts and tribunals that have occurred in the period since March 2023. It also highlights our members' news and job opportunities.

Since our last newsletter, we are pleased to report that ICTIG successfully organized two events, one on the advisory function of international courts and tribunals, which was held on March 30 as part of the ASIL Annual Meeting, and the other one on the various disputes that have arisen in the context of the ongoing armed conflict in Ukraine, which was held online on May 5. These events were well-attended and allowed engaging with leading experts in the field, including on some of the key challenges that international courts and tribunals face today.

Some of the tentative topics for future events of ICTIG include: the rise of inter-State applications before regional human rights courts, issues relating to the phenomenon of litigation in the general or collective interest, the role of international courts and tribunals in the context of reparations, the relationship between international and domestic judges, and the issues of climate justice before international courts and tribunals. In identifying topics for ICTIG's events, we benefit greatly from the input of our fellow members of the Advisory Board, namely Freya Baetens, Chad Farrell, Stuart Ford, Stefan Kirchner, Philipp Kotlaba, Sara Ochs, Lisa Reinsberg and Julia Sherman. We are extremely grateful for their continued contributions. Obviously, we are also keen on hearing directly from you, members of ICTIG. Please do not hesitate to reach out if you have an idea or event in mind, which might be particularly interesting to the membership.

Finally, we would like to address special thanks to Sara Ochs and Lisa Reinsberg for their tireless and high-quality work in putting together ICTIG's Newsletter, which we hope you find useful and informative.

-Massimo Lando & Vladyslav Lanovoy, Co-Chairs

Reader Survey

The ICTIG Newsletter editors invite readers to complete a short survey to help shape and improve this publication. Since August 2020, the Newsletter has gone out to ICTIG members every quarter, and we would like to ensure it remains a useful and relevant source of information and community building. We would very much appreciate your anonymous feedback via this short [Google Form](#). Thanks for the input received so far!

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International Courts & Tribunals Interest Group

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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.

ICTIG Events

Who Judges the Judges?: Oversight Mechanisms in International Dispute Resolution



On June 21 and 22, academics and practitioners convened in Oxford for a conference entitled “Who Judges the Judges?: Oversight Mechanisms in International Dispute Resolution.” The success of international courts and tribunals as dispute resolution bodies is to a large extent dependent on their

legitimacy, which in turn is intertwined with concepts of transparency, fairness, accountability and legality. Accordingly, the manner and effectiveness of oversight and governance over these institutions is of crucial importance, enabling legitimacy in all its facets.

This Conference - supported by the ASIL ICTIG, the Universities of Oxford and Oslo, funded by the Research Council of Norway, and organized by ICTIG Advisory Board member Prof. Freya Baetens - sought to provide a broad consideration of the nature, role, risks and challenges of oversight mechanisms in international dispute resolution. The presentation and discussion of papers investigating a variety of issues in this area facilitated in-depth engagement with cutting-edge questions in the study of international courts and tribunals, and the development of a roadmap for future scholarship. ICTIG members who would be interested in contributing to the publication are welcome to contact Prof. Baetens at freya.baetens@law.ox.ac.uk.

International Courts and Tribunals Amidst the Conflict in Ukraine: Avenues for Justice and Peace?



On May 5, the ICTIG hosted a panel entitled “The Role of International Courts and Tribunals amidst the Conflict in Ukraine: Avenues for Justice and Peace?”

The panel, which was conducted virtually and organized by ICTIG Co-Chair Vladyslav Lanovoy and Advisory Board member Chad Farrell, featured speakers Nilufer Oral, Juliette McIntyre, Vitaliy Pogoretsky, Gaiane Nuridzhanian, and Sebastian Wuschka. They discussed the various international proceedings concerning the conflict in Ukraine, including inter-State cases before the International Court of Justice and World Trade Organization Dispute Settlement Body, individual applications before the European Court of Human Rights, and investor-State arbitration cases. A recording of the panel is available on [YouTube](#).

Advisory Opinions as Instruments of Dispute Settlement: March 30



The ICTIG organized a session at the ASIL Annual Meeting entitled “Pushing the Limits of Judicial Function: Advisory Opinions as Instruments of

Dispute Settlement.” The speakers - Catherine Amirfar, Freya Baetens, Laurence Boisson de Chazournes, and Peter Tzeng - focused on the most recent developments concerning advisory opinions on climate change, but also addressed fundamental questions including the effects of advisory opinions, their link with contentious proceedings and whether they can be valuable instruments to promote dispute settlement. The panel took place on March 30 and was sponsored by Curtis, Mallet-Prevost, Colt & Mosle, LLP.

Developments at International Courts & Tribunals

International Criminal Court Issues Arrest Warrant for Putin

On March 17, the ICC Pre-Trial Chamber issued arrest warrants for Russian President Vladimir Putin and Russia's Commissioner for Children's Rights, Maria Alekseyevna Lvova-Belova. Based on the Prosecutor's application for the arrest warrants, the Pre-Trial Chamber explained that there exists reasonable grounds to believe that both individuals have engaged in the war crimes of unlawful deportation of population (children) and unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation in the context of Russia's ongoing war with Ukraine.

Russia is not a State Party to the Rome Statute, and neither individual has yet to surrender to the ICC. Instead, in apparent retaliation, Russia issued its own arrest warrants for Prosecutor Karim Khan and ICC Judges Tomoko Akane, Rosario Salvatore Aitala and Sergio Gerardo Ugalde Godinez (the Pre-Trial Judges who issued the ICC arrest warrants), claiming that these individuals have "issued unlawful decisions." No arrests of ICC personnel by Russia have yet been made, and the ICC issued a statement expressing its profound concern about Russia's "unjustified coercive measures" and affirming that it will "remain undeterred" in seeking justice for crimes within its jurisdiction.

Hashim Thaci, et al Case Begins Before Kosovo Specialist Chambers

The Kosovo Specialist Chambers commenced its trial against Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi on April 3. All four defendants are former members of the Kosovo Liberation Army (KLA), and the charges against them relate to their conduct as KLA members in 1998 and 1999 throughout Kosovo and Northern Albania. All defendants are charged with six counts of crimes against humanity and four counts of war crimes, including torture, murder, and persecution. This marks the third trial conducted by the KSC pertaining to substantive international crimes and is highly notable given that Hashim Thaçi had been serving as the President of Kosovo at the time the indictment was issued. He resigned shortly thereafter and surrendered himself to the KSC. The trial currently remains ongoing.

Regional Human Rights Courts Adopt San José Declaration at Bi-Annual Forum

The three regional human rights courts met in San José, Costa Rica on May 25 and 26 for their third bi-annual International Human Rights Forum. The presidents and other representatives of the African Court on Human and Peoples' Rights, European Court of Human Rights, and Inter-American Court of Human Rights discussed current human rights themes and common challenges facing their institutions, according to statements released by the IACTHR and AfCHPR. The meeting closed with the signing of the San José Declaration (II), in which the three courts reiterated the importance of States' protection of human rights, democracy and the rule of law, judicial independence and integrity, coordination and collaboration among regional courts, and consolidation of efforts to promote and disseminate regional human rights standards. The courts also renewed their initial joint memorandum of understanding regarding the Forum, signed in Kampala in 2019, for an additional six years. The next Forum will be hosted by the African Court on Human and Peoples' Rights, in 2025.

Several States Designate Authorities for Enforcement of ECOWAS Court Judgments

Senegal, the Gambia, and Niger are among the Member States of the Economic Community of West African States to recently designate a national authority to oversee implementation of decisions from the ECOWAS Community Court of Justice. According to the Court's recent statements, these States have officially designated the Attorney General or Ministry of Justice as the entity responsible for enforcement, as required by Article 24(4) of the 2005 Supplementary Protocol on the Court.

World Bank Group Sanctions Board Issues Third Edition of Law Digest

The World Bank Group (WBG) Sanctions Board is an independent administrative tribunal that resolves all contested cases of sanctionable practices in development projects financed and supported by the WBG. In May 2023, the Sanctions Board issued the Third Edition of its Law Digest, which presents structured summaries of

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Sanctions Board precedent. The Law Digest covers themes such as the scope of the Sanctions Board's authority, various types of procedural and evidentiary questions in sanctions proceedings, analysis of liability, and application of aggravating and mitigating factors affecting sanctions. The Law Digest also includes key data relating to the work of the Sanctions Board and the WBG's larger sanctions system.

News Item submitted by Anna Ramos, Counsel at the World Bank Group Sanctions Board Secretariat

Inter-American Court Launches Online Audiovisual Platform

On May 22, the Inter-American Court of Human Rights began streaming on a new audiovisual platform, CORTE IDH TV. Similar to UN Web TV, the new site will serve as a streaming platform and audiovisual library of the Court's activities, including hearings. As outlined in the Court's [press release](#) (Spanish only), content will include interviews with judges and human rights defenders, as well as a series on the impact of the Court's jurisprudence. Judge Ricardo C. Pérez Manrique, the Court President, discussed the initiative on the Court's [podcast](#). The new site links to the Court's YouTube channel, which will apparently also continue to house live streams and other content.

Al Hassan Trial Concludes Before the International Criminal Court

[Closing statements](#) in *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* took place from May 23-25 before Trial Chamber X of the ICC. Al Hassan was charged with crimes against humanity and war crimes allegedly committed in Timbuktu, Mali. Throughout the trial, which opened in July 2020, the Prosecution called 52 oral witnesses, the defense called 22, and the legal representatives of victims called two. Trial Chamber X will now deliberate on the proceedings and pronounce its decision as to conviction or acquittal within a reasonable period.

IRMCT Arrests Fugitive Fulgence Kayishema

On May 24, genocide fugitive Fulgence Kayishema was [arrested](#) in Paarl, South Africa in a joint operation conducted by the Office of the Prosecutor for the

International Residual Mechanism for Criminal Tribunals (IRMCT) and South African authorities. Kayishema was wanted by the IRMCT for his role in the Rwandan Genocide, and specifically for orchestrating the massacre of 2,000 Tutsi refugees at the Nyange Catholic Church. He will be delivered into the custody of and ultimately face trial before the IRMCT. There now remain only three fugitives wanted by the IRMCT who are still at large.

Courts and Profession Mourn Passing of Thomas Buergenthal

Renowned jurist Thomas Buergenthal passed away on May 29 at the age of 89. Via a [press release](#) and [Twitter post](#), respectively, the Inter-American Court of Human Rights and International Court of Justice recognized the contributions of Judge Buergenthal, who served on the IACtHR from 1979 to 1991 and on the ICJ from 2000 to 2010. Judge Buergenthal's personal history and contributions to public international law are highlighted in an [ASIL post](#) on his passing.

Canada and the Netherlands Institute Proceedings against Syria at ICJ

The International Court of Justice [announced](#), on June 12, that Canada and the Kingdom of the Netherlands had jointly instituted proceedings against the Syrian Arab Republic and [requested](#) the Court to indicate provisional measures. The [application](#) concerns alleged violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in relation to the ongoing armed conflict in Syria and dating back to at least 2011.

African Court on Human and Peoples' Rights Elects Bureau

On June 12, the African Court on Human and Peoples' Rights [announced](#) the re-election of Honourable Lady Justice Imani Daud Aboud (Tanzania) as President, for a final two-year term, and the election of Honourable Justice Sacko Modibo (Mali) as Vice President. Justice Imani Daud Aboud was first elected to the Court in 2018, and both justices began serving their current six-year terms in 2021.

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ICJ Authorizes International Union for Conservation of Nature to Participate in Climate Change Advisory Proceedings

The International Court of Justice announced on June 14 that it had authorized the International Union for Conservation of Nature (IUCN) to participate in the advisory proceedings on *Obligations of States in respect of Climate Change*. The IUCN is a membership organization, established in 1948 under Swiss law, and composed of governmental entities and civil society organizations. The ICJ's decision is understood to be the first time the Court has allowed an organization of this particular nature to provide written submissions on a question before the Court.

ICC Prosecutor Announces New Preliminary Examination into Situation in the Democratic Republic of the Congo

On June 15, International Criminal Court Prosecutor Karim Khan announced that his office intends to pursue a “prompt” preliminary examination into newly reported crimes in the Democratic Republic of the Congo (DRC). This announcement stemmed from the DRC's self-referral to the ICC, which requested that the Prosecutor investigate alleged crimes committed in North Kivu where the M23 rebel group has recently launched an offensive. This is the DRC's second referral to the ICC; the first pertained to alleged crimes committed within the context of an armed conflict since 2004 and has already resulted in several trials and the convictions of Germain Katanga, Thomas Lubanga, and Bosco Ntaganda. In his statement, Prosecutor Khan explained that his office's preliminary examination would consider whether the two referrals are of sufficiently similar nature so as to be joined as one situation.

NATO Administrative Tribunal Turns 10

The North Atlantic Treaty Organization Administrative Tribunal celebrated its 10th Anniversary at an event held on June 29 in Brussels. Participants included tribunal members and registrars from many other international organizations. Panels focused on procedures (in particular in light of COVID-19 pandemic experience), harassment claims, remedies, and regulatory and discretionary decisions. The event also honored the work of outgoing NATO AT President, Chris de Cooker (Netherlands), and

Vice-President Laurent Thouvet (France). Lois Otis (Canada) has been designated as the new President of the NATO AT, which will soon elect its Vice-President.

News item submitted by Anne Trebilcock, Member, NATO AT.

International Criminal Court Releases 2023-2025 Strategic Plans

On June 14, the ICC, along with its Office of the Prosecutor, Registry, and Trust Fund of Victims all issued their strategic plans for 2023-2025. This is the first time that all four strategic plans were developed and adopted concurrently. The concurrent nature of these plans is intended to “underscore the commitment of the three Organs of the Court to the One-Court principle.”

EACJ Mourns Passing of Justice Stella Arach-Amoko

The President of the East African Court of Justice conveyed his condolences upon learning of the death of former EACJ judge Stella Arch-Amoko. Justice Arach-Amoko served on the Court from 2006 to 2014, and was its first female Deputy Principal Judge. She later served on the bench of the Supreme Court of Uganda, until her passing on June 17.

Inter-American Court Sets Deadlines for Observations on Three Advisory Opinions

The Inter-American Court of Human Rights has set upcoming deadlines - in July, August, and September 2023 - for written observations on three pending requests for advisory opinions. July 10 is the deadline for submissions, by email or post, concerning Mexico's request for an advisory opinion regarding “the activities of private companies engaged in the firearms industry and their effects in human rights.” August 18 is the deadline for Chile and Colombia's request for an advisory opinion regarding the climate emergency and human rights. September 20 is the deadline concerning Argentina's request for an advisory opinion on “the content and scope of care as a human right, and its interrelationship with other rights.” All interested parties may submit written observations, as *amici curiae*, subject to the requirements described in the relevant announcements. ■



Notable Judgments & Decisions

ICJ Delivers Judgment in Case Concerning Iranian Assets (*Islamic Republic of Iran v. U.S.A.*)

Vladyslav Lanovoy, Assistant Professor, Université Laval, Quebec City, Canada

On March 30, the International Court of Justice (ICJ) delivered its judgment on the merits in a case brought by Iran against the United States on June 14, 2016. This case concerns the United States' alleged violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Treaty of Amity), which entered into force in 1957 and which the United States denounced on October 3, 2018. The alleged violations comprised measures that have had the effect of freezing and attaching assets of the Government of Iran, including those of Bank Markazi (the Central Bank of Iran) and of other Iranian financial institutions, within United States territory or "within the possession or control of any United States person, including any foreign branch."

Before turning to the merits, the Court ruled on the United States' objections to jurisdiction and admissibility that were not resolved in its earlier judgment on preliminary objections of February 13, 2019. First, the Court found that Bank Markazi, whose assets constituted the bulk of the assets affected by the measures, was not a "company" within the meaning of the Treaty of Amity, and thus upheld the United States' objection to jurisdiction. Second, the Court dismissed the United States' objection to the admissibility of Iran's application based on a failure to exhaust local remedies.

On the merits, the Court rejected the United States' defenses, both those based on the doctrines of "clean hands" and "abuse of rights," as well as those based on the provisions of the carve-outs found at Art. XX(1)(c) and XX(1)(d) of the Treaty of Amity. The Court held that the United States' conduct in respect of Iranian companies and their assets amounted to violations of Art. III(1), IV(1), IV(2), and X(1) of the Treaty of Amity. As a result, the Court found that the United States is under an obligation to compensate Iran for the injury caused by these violations and declared that the parties should try to agree on the question of compensation within 2 years from the date of the judgment. If they are unable to agree, then either party may request that the matter be settled by the Court.

New Publications

ICTIG members have recently published articles, essays, chapters, books, and blogs, including those listed below.

Articles, Essays & Book Reviews

- Jonathan Brosseau, *How the World Bank's Dispute Resolution Services Should Benefit Affected People and Borrowing States*, United Nations University (Working Paper Series 2023).

Books & Book Chapters

- Christiane Ahlborn, Paolo Patarroyo & Douglas Pivnichny, United Nations Legislative Series, *Materials on the Responsibility of States for Internationally Wrongful Acts* (2d ed., United Nations 2023).
- *International Arbitration in Times of Economic Nationalism* (Björn Arp & Rodrigo Polanco eds., Wolters Kluwer 2023).
- *The EU and the WTO: Ever the Twain Shall Meet* (Freya Baetens & Stefaan Van den Bogaert eds., Wolters Kluwer 2023).

ECtHR Finds No Violation in Germany's Refusal to Indicate Transgender Parent's Gender on Child's Birth Certificate

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

On April 4, the European Court of Human Rights decided *O.H. and G.H. v. Germany* (French only) and *A.H. and others v. Germany* (French only), concerning the rights of transgender persons who are parents. O.H. had been assigned female at birth, later obtained legal recognition of his gender transition, and gave birth to a child, G.H. On the birth certificate, O.H. is listed as the mother of G.H. A.H. had been assigned male at birth and later obtained legal recognition of her gender change to female. On the birth certificate of A.H.'s child, A.H. is listed as the father. In both cases, the authorities refused to indicate the parents' legally recognized gender and forenames on the relevant documentation, and claimed that a person who gives birth to a child must be listed as the mother on the child's birth certificate.

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In its judgments, summarized separately, the ECtHR found that while the cases were covered by the right to family life under Article 8 of the European Convention on Human Rights, the State action at issue should be analyzed with respect to fulfillment of positive obligations, rather than as an interference with this right. As such, the Court assessed the importance of the interest at stake, the impact on any essential or fundamental aspects of private life, the impact on the applicant, and the scope of the positive obligation. The Court found a wide margin of appreciation applied, based on the possibly competing identity-related rights of parents and children, the lack of consensus among European States on recording births to trans parents, and the various interests German authorities had to balance in devising an approach. The ECtHR found that Germany had struck a fair balance between competing interests and that the familial bond between parents and children had not been questioned by the State. It concluded there had been no violation of Article 8, and declared the application manifestly ill-founded with regard to the alleged violation of Article 14 (non-discrimination) in conjunction with Article 8.

Kosovo Specialist Chambers Issues First Reparations Judgment

Sara L. Ochs, Associate Professor, Elon University School of Law

On April 6, Trial Panel I of the Kosovo Specialist Chambers (KSC) issued its reparations order against Salih Mustafa. In December 2022, this trial panel convicted Mustafa, a former Kosovo Liberation Army Commander, for committing war crimes of arbitrary detention, torture, and murder at the detention compound in the village of Zllash in 1999. The panel sentenced Mustafa to 26 years' imprisonment.

In its reparation order, the first ever issued by the KSC, Trial Panel I ordered Mustafa to pay a total of €207,000 as compensation for the harm he caused to his victims through the commission of his crimes. Eight victims participated in the proceedings and their share of the reparations range from €2,000 to €80,000. The Trial Panel recognized that while it is Mustafa's sole responsibility to pay the reparations, he does not currently have the financial means to do so. As such, the Trial Panel encouraged other entities—such as Kosovo's existing Crime Victim Compensation Program—to step in to cover the payments. Alternatively, the panel

proposed that Kosovo create a new reparation mechanism for KSC crime victims to ensure victims receive their ordered reparations.

ICJ Decides Preliminary Objection in Case Concerning Arbitral Award of 3 October 1899 (Guyana v. Venezuela)

Philipp Kotlaba

On April 6, the International Court of Justice rejected by 14–1 Venezuela's preliminary objection in *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, thus paving the way for consideration on the merits of the two countries' long-running border dispute.

This case's eponymous, nineteenth-century arbitral award became the subject of considerable intrigue in the twentieth century, with Venezuela having proclaimed its nullity on account of an alleged "fraud" committed by the United Kingdom (Guyana's erstwhile colonial ruler) on the 1899 arbitral tribunal. Consistent with that stance, Venezuela's preliminary objection asserted that the legal interests of the United Kingdom—a non-party before the ICJ—would constitute the "very essence" of any decision on the merits, such that the present case was inadmissible consistent with the *Monetary Gold* principle of indispensable third parties.

The Court had issued a decision on jurisdiction in 2020, without Venezuelan participation, and Guyana sought to dismiss Venezuela's subsequently lodged preliminary objection by reference to the *res judicata* effect of the earlier judgment. The Court, however, deemed its prior judgment to relate only to the question of the "existence" of its jurisdiction, not its "exercise" (i.e. admissibility). Guyana found greater success in its argument that the UK had accepted that the Court would exercise jurisdiction by virtue of entering into the 1966 Geneva Agreement, the treaty founding the Court's jurisdiction in this case. The provisions of that treaty—concluded mere months before Guyana's independence—made clear Britain's acceptance that settlement of the dispute would proceed without it and be a matter for Guyana and Venezuela alone. Subsequent practice, the Court found, reinforced this conclusion. Accordingly, the *Monetary Gold* principle did not "come into play." The Court's vague formulation, as reflected in Judge *ad hoc* Wolfrum's declaration, leaves

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room for debate regarding whether *Monetary Gold* was satisfied, or somehow implicitly displaced.

Inter-American Court Finds Multiple Violations in Case of Discriminatory Treatment of Same-Sex Couple in Supermarket

Lisa Reinsberg, International Justice Resource Center

On April 11, the Inter-American Court of Human Rights announced its judgment (Spanish only) in the case of *Olivera Fuentes v. Peru*, concerning domestic authorities' handling of his complaint of discrimination on the basis of sexual orientation. Crissthian Manuel Olivera Fuentes alleged that, in 2004, a coffee shop in a Lima supermarket asked him and his same-sex companion to stop showing affection to one another, because children were present and other customers would be uncomfortable, or to leave the store. He filed a complaint with a national consumer protection body, which rejected the allegations based on ambiguities between the two parties' versions of events, amounting to insufficient evidence of discriminatory treatment. Olivera Fuentes' further administrative and legal challenges were also unsuccessful.

In deciding the case, the IACtHR developed the standards that apply to private entities with regard to equality and non-discrimination on the basis of sexual orientation. The Court emphasized that all sectors of society can and should contribute to respect for the rights of LGBTQI+ persons, and that States must therefore establish necessary policies and oversight to ensure corporations create appropriate policies, exercise due diligence regarding risks related to their activities or products, and redress their negative human rights impacts.

With regard to Peru's international responsibility in this particular case, the Court noted the strong evidence of discrimination by the coffee shop, which required Peruvian authorities to ensure that there had been a weighty or objective justification. In light of their failure to require the business to provide a non-discriminatory purpose for its treatment of Olivera Flores and his companion, in addition to the administrative bodies' reliance on social prejudices in rejecting his complaints, the Court found violations of articles 7.1 (liberty), 8.1 (fair hearing), 11.2 (privacy), 24 (equal protection), and 25

(judicial protection) of the American Convention on Human Rights.

The Court ordered the State to design and implement an awareness-raising campaign and educational curriculum for administrative and judicial authorities on respect for the rights of LGBTQI+ persons, as well as a public policy to ensure corporate compliance with national and Inter-American standards on equality and non-discrimination with regard to LGBTQI+ persons, among other measures of reparation.

ECtHR Grants Just Satisfaction in *Georgia v. Russia (II)*, Based on Georgia's Plausible, Substantiated Allegations from 2008 Conflict

Stefan Kirchner, University of Lapland, Rovaniemi, Finland

As a consequence of Russia's war of aggression against Georgia in 2008 and the subsequent occupation of parts of Georgia's territory that continues to this date, Georgia has brought several cases against the Russian Federation before the European Court of Human Rights (ECtHR). Russia has committed multiple violations of the European Convention on Human Rights (ECHR) on the territory and against citizens of Georgia.

On April 28, the Grand Chamber of the ECtHR issued its judgment granting just satisfaction in *Georgia v. Russia (II)*. Just satisfaction for violations of the ECHR is provided by Article 41 ECHR. In *Georgia v. Russia (I)*, the Court had previously addressed the role of Article 41 ECHR in inter-State cases, holding that decisions on the question of just satisfaction must be decided on a case-by-case basis. The text of Article 41 ECHR does not indicate that it would only apply to individual applications brought under Article 33 ECHR; instead Article 41 ECHR can, in principle, also apply to inter-State cases brought under Article 32 ECHR. Taking into account Russia's tens of thousands of human rights violations against citizens of Georgia, the Grand Chamber awarded over €130 million to Georgia, mainly regarding the 30,000 Georgian citizens who were unable to return to their homes in parts of Georgia that remain de facto occupied by Russia.

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On March 16, 2022, Russia was expelled from the Council of Europe (COE) and the ECHR ceased to apply to Russia as of six months after that date. However, the Committee of Ministers of the COE continues to supervise the execution of judgments against the Russian Federation.

ITLOS Issues Judgment in Dispute Concerning Delimitation of the Maritime Boundary Between Mauritius and Maldives in the Indian Ocean

Massimo Lando, Assistant Professor, City University of Hong Kong & ICTIG Co-Chair

On April 28, a Special Chamber of the International Tribunal for the Law of the Sea (ITLOS) gave its judgment on maritime delimitation between Mauritius and Maldives. The delimitation case rested on Maldives' maritime entitlements overlapping with those generated by the coast of the Chagos Archipelago. This aspect had brought the case into the spotlight when, in 2021, the Special Chamber handed down its preliminary objections judgment rejecting the Maldives' jurisdictional objections and thus recognizing that Mauritius had sovereignty over Chagos.

The Tribunal's recent judgment concerned the merits of Mauritius' claims for delimitation. The Special Chamber applied the established three-stage delimitation process, delimiting a boundary as an equidistance line adjusted to take into consideration the effect of extensive areas of drying reefs around Blenheim Reef. The most interesting part of the judgment is the one concerning delimitation of the continental shelf beyond 200 nautical miles (nm). The Special Chamber first found that it had jurisdiction to delimit the continental shelf beyond 200 nm, and then considered whether Mauritius had proved that it had a maritime entitlement beyond 200 nm. Both parties had made submissions to the Commission on the Limits of the Continental Shelf, but the Commission had made no recommendation ascertaining the existence of entitlements beyond 200 nm. Applying a test that ITLOS had formulated in *Bangladesh/Myanmar*, the Special Chamber found that there was "significant uncertainty" concerning whether Mauritius maritime entitlement extended to the continental shelf beyond 200 nm. Accordingly, the Special Chamber did not delimit the maritime boundary beyond 200 nm.

This case is the first one in which an international tribunal has found that a State has not shown that it is entitled to a shelf beyond 200 nm and has applied the "significant uncertainty" test. Future cases may bring about further elaboration on this yet undeveloped aspect of delimitation case law.

ECtHR Grand Chamber Confirms No Violation in Fine for Politician's Failure to Delete Islamophobic Facebook Comments

Stefan Kirchner, University of Lapland, Rovaniemi, Finland

The applicant in the case of *Sanchez v. France* before the European Court of Human Rights (ECtHR) had been a candidate for political office. During his candidacy, he operated but did not moderate a "wall" on the internet platform Facebook where his supporters were able to leave comments. These comments included Islamophobic statements. The applicant and two users of his Facebook wall who had posted Islamophobic comments were convicted for inciting hatred and violence against Muslim persons. In 2021, a Chamber of the European Court of Human Rights found that the applicant's conviction had not violated the freedom of speech under Article 10 of the European Convention on Human Rights (ECHR). Instead, the Chamber determined that the applicant's conviction constituted an interference with his rights under Article 10 ECHR that was justified as a measure that was necessary in a democratic society for the prevention of disorder or crime.

In its judgement of May 15, the ECtHR Grand Chamber agreed, noting the lack of consensus among Member States regarding the responsibility of moderators of online fora. The Grand Chamber recognized the challenges associated with such a moderation but also noted that exempting moderators from all liability could lead to more hate speech and misinformation. French law uses a system of shared responsibility, covering authors and moderators/providers. This system was the reason why not only the authors of comments but also the applicant had been found by French courts to be at fault (a fact that distinguishes the case from the landmark decision in *Delfi AS v. Estonia*). The Grand Chamber considered this

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legal construction's use in the present case as compatible with Article 10 and accordingly did not find a violation of the freedom of speech.

International Residual Mechanism for Criminal Tribunals (IRMCT) Rules on Stanišić's and Simatović's Appeal

Sara L. Ochs, Associate Professor, Elon University School of Law

On May 31, the Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (IRMCT) issued its **judgment** in the appeal of Mr. Jovica Stanišić and Mr. Franko Simatović. In a case with a long and winding procedural history throughout both the ICTY and the IRMCT, both defendants had ultimately been convicted by the Mechanism's Trial Chamber Judgment of June 30, 2021, in which they were found guilty of aiding and abetting the crime of murder as a war crime and crime against humanity, and the crimes of deportation, forcible transfer, and persecution as crimes against humanity, and sentenced to 12 years' imprisonment.

On appeal, both defendants, as well as the prosecution, challenged the Trial Chamber's judgment. The Appeals Chamber dismissed Mr. Stanišić's and Mr. Simatović's appeals of their convictions and sentences. However, the Trial Chamber granted part of the prosecution's appeal insofar as it alleged that the Trial Chamber erred in failing to convict the defendants under the theory of joint criminal enterprise liability. The Trial Chamber had concluded that both defendants had been members of a joint criminal enterprise that sought to forcibly and permanently remove non-Serbs from a specific geographic area, but determined that neither defendant had shared the intent to further the enterprise's common criminal purpose.

The Appeals Chamber agreed with the prosecution that the Trial Chamber erred in finding that the defendants lacked intent to further the enterprise's criminal purpose and determined that they were liable under the theory of joint criminal enterprise for crimes committed by Serb forces in 1992 and 1995 throughout Bosnia and Herzegovina and for a murder committed in Croatia in 1992. The Appeals Chamber dismissed the rest of the prosecution's appeal and increased both defendants' sentences to 15 years' imprisonment.

ECtHR Grand Chamber Inadmissibility Decision Rejects "Recharacterisation" of Complaint by Chamber

Stefan Kirchner, University of Lapland, Rovaniemi, Finland

Usually, the European Court of Human Rights will limit its deliberations to the violations of human rights that have been alleged in the application form. However, in *Grosam v. Czech Republic*, the Grand Chamber dealt with a case involving an alleged violation raised after the six-month limit (which since has been replaced by the four-month limit) had passed and after the case had been communicated to the respondent government. Specifically, the Chamber to which the case had been assigned requested that the applicant and the respondent State provide additional written observations on whether the disciplinary chamber of the Supreme Administrative Court of Czechia constituted a "tribunal established by law" within the meaning of Article 6 (1) of the European Convention on Human Rights (ECHR). The applicant had not raised this issue in the original application but raised it when given this opportunity.

Upon consideration of the parties' pleadings, the Chamber found that the disciplinary chamber of the Supreme Administrative Court of Czechia did not meet this requirement and, accordingly, its conduct of disciplinary proceedings against Grosam violated his right of access to an independent and impartial tribunal. The Court declined to examine the admissibility or merits of the other allegations related to Article 6(1) and declared the remainder of the application inadmissible.

On June 1, the ECtHR Grand Chamber **ruled** that the Chamber had extended the scope of the application in a way that was not compatible with the Court's duties under Articles 32 and 43 ECHR. It noted that a "claim" includes both the factual allegations and legal arguments, which are intertwined and limit the Court's examination. The Grand Chamber asserted that "it is not sufficient that a violation of the Convention is 'evident' from the facts of the case or the applicant's submissions," but must be clearly alleged. Given that the applicant's complaint concerning the independence and impartiality

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of the disciplinary chamber had been submitted after the deadline, the Grand Chamber upheld the State's preliminary objection on timeliness. It also declared the remaining complaints inadmissible.

ICJ Decides Admissibility of 33 States' Interventions in *Ukraine v. Russia*

Lisa Reinsberg, International Justice Resource Center

On June 9, the International Court of Justice announced its June 5 decision concerning the admissibility of 33 States' declarations of intervention in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*. Thirty-three States sought to intervene in the proceedings pursuant to Article 63 of the ICJ Statute, which permits other States parties to a convention to intervene in proceedings concerning the construction of that convention. Articles 81 through 86 of the ICJ's *Rules of Court* detail the requirements for submitting and determining the admissibility of requests to intervene. Between July 2022 and the Court's deadline of December 15, 2022, the States submitted declarations of intervention, which the Court addressed together in one ruling.

Russia argued that the declarations of intervention were not "genuine," in that they sought to support Ukraine's application rather than address the construction of the Genocide Convention. The Court emphasized that its role is to ascertain whether the proposed intervention relates to the interpretation of a convention, and a State's particular motivation is not relevant. Russia raised six other objections related to equality and due process, in connection with the motivation, scope, and procedural timing of the interventions, and with the nationality of sitting judges.

The Court rejected these objections, as well as Russia's objection to the joint nature of the declaration by Canada and the Netherlands. By a vote of 14 to 1, the Court admitted the declarations of intervention submitted by 32 States and set a deadline of July 5 for submission of written observations by those States.

The Court, however, unanimously declared inadmissible the declaration of intervention submitted by the United States, insofar as it concerned the preliminary objections phase. Russia had argued that the United States was precluded from intervening by virtue of its reservation to the Article IX compromissory clause of the Genocide Convention, requiring its specific consent for submission to the ICJ of a dispute involving the United States. The Court concluded "that the United States may not intervene in relation to the construction of Article IX of the Convention while it is not bound by that provision" and that the United States' assertion that the Court's interpretation would be binding on it could not trump the legal effects of the reservation.

AfCHPR Orders Tanzania to Revise Law on "Unbailable" Offenses

Lisa Reinsberg, International Justice Resource Center

In a judgment notified on June 13, the African Court on Human and Peoples' Rights considered Section 148(5) of Tanzania's Criminal Procedure Act, which prohibits the granting of bail to any defendant who has previously served a sentence of more than three years or who is charged with a crime related to property worth over TZS 10,000,000 (approximately USD \$4,000). The NGO applicants - Legal & Human Rights Centre and the Tanzania Human Rights Defenders Coalition - argued that Section 148(5) was discriminatory and deprived individuals of their due process and liberty rights.

The AfCHPR rejected Tanzania's objections on jurisdictional and admissibility grounds, except for finding duplication with its prior decision in *Analect Paulo v. Tanzania*, with regard to whether Section 148(5)(a) of the Criminal Procedure Act (denying bail to those accused of, *inter alia*, armed robbery) violated the right to liberty. In the *Paulo* case, the AfCHPR held that Section 148(5)(a) did not contravene the African Charter on Human and Peoples' Rights because it was sufficiently clear, pursued a legitimate aim, and served a public interest. In the present judgment, the AfCHPR emphasized that the *Paulo* case did not raise Section 148(5)'s application to other cases, judicial discretion, or the right to be heard, but rather only whether the denial of bail in that case was justifiable.

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Opportunities

Prizes

Women, Gender & the Law Emerging Scholar Award

The Elisabeth Haub School of Law at Pace University invites the submission of papers by individuals with five or fewer years of full-time law teaching experience, for consideration for the Women, Gender & the Law Emerging Scholar Award. Submissions are due July 1 and additional details are available in the [competition announcement](#).

2023 ABILA Book Awards

The American Branch of the International Law Association is accepting nominations for three book awards, for: Book of the Year, Practitioners Book, and New Authors Book. Nominations are due July 1, and additional information can be found on the award [webpage](#).

2023 ABILA Outstanding Achievement Award

The American Branch of the International Law Association is accepting nomination for the 2023 Outstanding Achievement Award, in recognition of outstanding contributions to the field of international law. The deadline for nominations is July 1. Additional details can be found on the award [webpage](#).

Conferences, Webinars & Programs

Human Rights and Procedure: Perspectives of International Law: July 6-7

The Max Planck Institute Luxembourg for Procedural Law and Université de Strasbourg will host a conference on Human Rights and Procedure, in person, at MPI Luxembourg on July 6 and 7. Registration is open and additional details are available on the event [webpage](#).

European Society of International Law Annual Conference: August 31-September 2

The European Society of International Law will hold its 18th Annual Conference in Aix-en-Provence, France on August 31 to September 2, on the theme “Is international law fair?” Registration and other information is available on the conference [webpage](#).

International Law Weekend: October 19-21

The American Branch of the International Law Association will host International Law Weekend in New

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On the merits, the AfCHPR held that Section 148(5)(b) and (e) are discriminatory in that they treat persons accused of certain crimes less favorably than those accused of other crimes, without sufficient justification. In confirming the alleged violations of the right to presumption of innocence and the right to be heard, the Court noted the legitimate objectives pursued by prohibiting bail in certain circumstances, but found these provisions to be neither necessary nor proportionate. Citing the European Court of Human Rights’ jurisprudence on automated denial of bail, the AfCHPR emphasized the importance of judicial independence and discretion. The judgment apparently departs from *Paulo* in requiring individualized determination, by the judiciary, of the appropriateness of bail. The Court ordered Tanzania to “take all necessary constitutional and legislative measures” within two years to amend the Criminal Procedure Act, to publish the judgment, and to report back on implementation. ■

York City on October 19 to 21. This year’s theme will be “Beyond International Law.”

Calls for Papers

Melbourne Journal of International Law

The editors of the *Melbourne Journal of International Law* are accepting submissions for volume 24(2) on or before July 1. Details are available in the [call for submissions](#)

ASCOMARE Yearbook on the Law of the Sea, Volume 3

The ‘Associazione di Consulenza in Diritto del Mare’ (ASCOMARE) has launched its call for papers for the Third Volume of its Yearbook series on the Law of the Sea. This Volume will focus on the regulatory, legal, and ethical implications of the use of new technology in maritime security. Abstracts are due July 3rd and further instructions for submissions are available in the [call for papers](#).

De-Centering the History of International Organizations Workshop

KU Leuven and the KADOC Documentation and Research Centre on Religion, Culture, and Society are seeking papers for a workshop to be held on November 29 - December 1st, 2023 that will examine issues pertaining to

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the legal histories and impact of international organizations. Paper proposals are due July 4th, and additional details are available in the [call for papers](#).

Justice in International Investment Law in a Post-ISDS World

Erasmus School of Law has issued a call for abstracts for a conference to be held in Rotterdam, Netherlands on November 23-24 that will “interrogate what a ‘post ISDS’ world entails in terms of delivering justice.” Abstracts must be submitted by July 16th, and additional details are available in the [call for papers](#).

Journal of International Criminal Justice Symposium on the ICC’s Ongwen Case

The Journal of International Criminal Justice is inviting submissions for a forthcoming symposium about the ICC’s case against Lord’s Resistance Army (LRA) commander Dominic Ongwen, to be published in June 2024. Submissions are due October 1st, and further instructions are available in the [call for papers](#).

Symposium on ‘Russia, Imperialism, and International Law’

The Walther Schücking Institute for International Law at the University of Kiel, Germany, will host an international symposium on ‘Russia, Imperialism, and International Law’ on 14-16 September 14-16. Abstracts should be around 1,000-1,500 words, and must be submitted along with a brief CV by July 3, 2023. Further instructions are available in the [call for papers](#).

Journal of International Law of Peace and Armed Conflict

The editorial board invites authors to submit papers to be published in the 2nd issue of 2023. This issue’s topical focus is on “International Criminal Jurisdiction.” Papers should be approximately 6,000 words inclusive of footnotes and, and the deadline for submissions is July 15. Further information is available in the [call for papers](#).

German Yearbook of International Law

The German Yearbook of International Law is open for submissions. Papers should be 10,000-12,500 words inclusive of footnotes, and the deadline for submissions is August 1, 2023. Additional details are available in the [call for papers](#).

New Technologies in International Law

The International Law Department of Charles University and the Czech Society of International Law, with the support of the European Society of International Law, are organizing a conference on New Technologies in International Law, to take place on November 23-24 in Prague. They invite abstracts, especially from early career researchers, concerning research to be presented at the conference and possibly included in a collective monograph. Abstracts are due August 1, and additional details can be found in the [call for papers](#).

Global Constitutionalism and Supranational Adjudicative Bodies

The Norwegian Centre for Human Rights is inviting abstracts for a seminar on global constitutionalism, international adjudicative bodies, and hegemony, to take place on November 16-17 in hybrid format. Participants from different disciplines are welcome to submit an abstract by August 21, as detailed in the [call for papers](#).

ESIL Research Forum 2024

The European Society of International Law Research Forum will take place on April 18 and 19, 2024 in Nicosia, Cyprus and will address the topic “Revisiting Interactions between Legal Orders.” The organizers invite abstracts by September 30. Additional details are available in the [call for papers](#).

Job Postings & Other Opportunities

Senior Legal Officer, International Residual Mechanism for Criminal Tribunals

The IRMCT is looking for a senior legal officer (P5) to provide overall management for the legal operations of the Registry in the Arusha branch of the Court. Applications are due by July 1, and further information is available in the [job posting](#).

Judicial Affairs Officer, UN Department of Peace Operations

The UN Department of Peace Operations is seeking a judicial affairs officer (P4) to work in its New York office.

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Applications are due July 9, with further information available in the [job posting](#).

Assistant Professor in Public International Law, University of Leiden

The Grotius Centre for International Legal Studies at the University of Leiden is seeking to hire an Assistant Professor in Public International Law. Applications must be submitted no later than August 1, with further instructions available in the [job posting](#).

Human Rights Officer (P3), Office of the High Commissioner for Human Rights

The Human Rights Council and Treaty Mechanisms Division of the Office of the High Commissioner for Human Rights seeks a Human Rights Officer, to be based in Geneva. Applications are due August 2, and additional details are in the [posting](#). ■

Member News

Stuart K. Ford will spend the 2023-2024 academic year as a Visiting Scholar with the Faculty of Law at the University of Oxford, while writing a forthcoming book aimed at defining and measuring success for the International Criminal Court.

Massimo Lando will join the Faculty of Law of the University of Hong Kong, as of September 1, as tenure-track Assistant Professor.

Sara L. Ochs will join Elon University School of Law as an Associate Professor in August. Her debut novel, *The Dive*, will be published by Bantam Books in July and is available for pre-order.

Benjamin Salas Kantor has joined the International Court of Justice as an Associate Legal Officer for a Member of the Court, and was also recently appointed Lecturer in Law at Columbia Law School, where he will co-teach a course on ICJ Jurisprudence and Challenges with Professor Sarah Cleveland.

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 (slochs27@gmail.com) and Lisa Reinsberg (lisa@ijrcenter.org).