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International Courts & Tribunals Interest Group Newsletter

Introductory Note

As we mark the 80th anniversary of the United Nations, with all its successes and setbacks, we are witnessing firsthand how the prohibition on the use and threat of use of force, described as a "**cornerstone of the United Nations Charter" by the International Court of Justice**, is undermined repeatedly, almost as if it were a **minor traffic violation**. States no longer bother to establish a legally and factually credible case to justify their otherwise illegal use of force under the United Nations Charter or customary international law. In the long term, this could have broader implications, including for the use of different diplomatic and jurisdictional mechanisms for the peaceful settlement of disputes.

For now, however, international courts and tribunals remain busy. Surely, many disputes, particularly in the inter-State context, could be regarded by skeptics or cynics as being "on the margins" of the real issue between the disputing parties, as a means of "instrumentalization" of international courts and tribunals, or as an example of strategic litigation. In my opinion, the threats scholars associate with these phenomena, whether real or artificial, are overstated. Bottom line, it is much better to have what political scientists call "lawfare" rather than "warfare". International courts and tribunals are fully equipped to prevent being misused or abused for purposes other than the genuine settlement of disputes. They can maintain the boundary between the limits of their jurisdiction and the proper application and interpretation of existing law, on the one hand, and any external considerations or objectives pursued by the parties, on the other. Moreover, we should not jump to quick conclusions about the limited effects that the decisions some may perceive as "on the margins" have in practice. Indeed, they can and often do bring the parties closer to a negotiated solution on broader issues between them. Attempts to resolve disputes, even if limited in scope, can often be a meaningful way to avoid armed conflict or reduce further escalation of violence. As eloquently shown in a recent post by my friend and fellow international lawyer from Lviv, Yuri Parkhomenko, international adjudication in wartime is **"as close as the international system gets to a level playing field"**. Finally, adjudication carries significant symbolic importance, acting as a venue where longstanding grievances and historical injustices can be brought to light in the courtroom. It is an opportunity to establish the right to truth in the eyes of the international community, which, regardless of the final decision, may offer a long-overdue redress to injured States, communities, and victims.

Despite the otherwise bleak times in the realm of international peace and security, the current docket of international courts and tribunals offers us a glimpse of hope for the future of peaceful settlement of disputes. Beyond the diverse docket of the ICJ (e.g. recent hearings on the merits in Gambia v. Myanmar; new declarations of intervention in South Africa v. Israel; forthcoming judgment on Guatemala's request

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to intervene in Belize v. Honduras), the recently concluded or pending cases at the PCA, such as the UK-Sandeel arbitration under the EU-UK Trade Cooperation Agreement, the arbitration between Rwanda and the UK pursuant to the Asylum Partnership Agreement, or the record number of investor-State cases registered with the PCA and ICSID, are a testimony to the vibrant nature and continued importance of international courts and tribunals in the international legal order.

This is my final newsletter as ICTIG's co-chair. It has been a privilege to serve in this role, first alongside Massimo Lando and then Philipp Kotlaba, and to engage with our Advisory Board members and members of our IG. As I conclude my mandate, I am proud of what the ICTIG has accomplished, particularly in broadening the scope of our activities and events, including fostering collaboration with other sister societies (e.g., past events on climate change advisory proceedings with LASIL/SLADI or on inter-State litigation at the ECtHR, with the ESIL). Most recently, we relaunched ICTIG's Works-in-Progress Conference, which brought together a fantastic group of scholars and practitioners to the University of Ottawa on February 19th. We are also finalizing the event on intervention, which will complete our trilogy on incidental proceedings. Finally, as part of the ASIL Annual Meeting program in April, we will host a panel on the composition of international courts and tribunals and whether and why it matters. Please join us for what promises to be a fascinating discussion.

Vladyslav Lanovoy, ICTIG's *Co-Chair*

Developments at International Courts & Tribunals

Conclusion of public hearings on the merits in *The Gambia v. Myanmar*

Muhammad Farrel Abhyoso

On January 29, 2026, the International Court of Justice concluded public hearings on the merits of the case of *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (The Gambia v. Myanmar: 11 States intervening). The hearings began two weeks before, on January 12, and saw The Gambia examine three witnesses and one expert, and Myanmar examine one witness. The Gambia made its final submissions on January 27, followed by Myanmar on January 29, bringing a close to the public hearings. The Gambia had commenced proceedings against Myanmar before the ICJ in 2019, alleging that Myanmar had violated its obligations under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the "Genocide Convention") in its actions against the country's Rohingya minority. In its application, The Gambia accused Myanmar of committing mass killings, rape, and other acts and measures aimed at destroying the Rohingya as a group. In 2020, the Court issued provisional measures, directing Myanmar to cease all alleged violations of the Genocide Convention. Myanmar, for its part, denied The Gambia's allegations, something which it reiterated in its final submission on January 29, in which it asked the Court to reject all of The Gambia's requests pertaining to Myanmar's alleged violations and failure to implement the 2020 provisional measures order "as lacking any basis in law or in fact". With the public hearings now concluded, the Court will deliberate and hand down its decision at a yet-to-be-announced date.

New Publications

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

Articles, Essays & Book Reviews

- Cody Corliss, *The War Crime of Spreading Terror*, 51 Yale J. Int'l L. 219 (2026), **https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5605170**.
- Helin Laufer, *Investment Arbitration and Armed Conflict – International Investment Law Asks; International Humanitarian Law Answers*, 41 Arb. Int'l 4 (2025), **https://academic.oup.com/arbitration/article/41/4/819/8381522**.

Books & Book Chapters

- Juan-Pablo Perez-Leon-Acevedo & Fabio Ferraz de Almeida (eds), *Lights and Shadows: The Ongwen Case at the International Criminal Court* (Brill 2026), **https://brill.com/display/title/73122**.
- Charles Quince, *Customary International Law: A Comprehensive Study of State Practice, Opinio Juris, and the Legitimacy of Norm Formation* (Vernon Press 2025), **https://vernonpress.com/book/2481?srsltid=AfmBOoo-WErvH-RfgkZnSmD4A_xvNr2_l-47VlhMnwJjxz-vu7D_Dil3C**.
  - Through rigorous doctrinal analysis, discussion of jurisprudence, and carefully selected case studies, the book examines how customary rules emerge and function within the international legal system. Its structured approach to state practice and *opinio juris* provides readers with practical tools for identifying and interpreting customary norms across diverse legal settings. Intended as a reference for scholars, practitioners, and students, the study has been praised by reviewers for its analytical depth and clarity.
- Richard H. Steinberg, *The International Criminal Court: Legal, Policy, and Political Challenges* (Brill 2025), **https://brill.com/display/title/69357**.
  - *The International Criminal Court: Legal, Policy, and Political Challenges* is a collection of essays by prominent international criminal law and policy commentators, responsive to questions of interest to the Prosecutor of the International Criminal Court. Topics include Superior Responsibility after the Bemba Appeals Judgment, Completion Strategies for Situations under Investigation, The Emerging Use of Cyber Evidence and Open Source Material at the ICC, U.S. Sanctions on the Court: Support, Opposition, and Off-Ramps, The Gravity Threshold, Cyber Operations and Cyberwarfare under the Rome Statute, Non-Western Law at the ICC: What Is Its Place?, and Decentralized Accountability: ICC Engagement with State Courts and Regional Entities.
- Yusra Suedi, *The Individual in the Law and Practice of the International Court of Justice* (CUP 2025), **https://www.cambridge.org/core/books/individual-in-the-law-and-practice-of-the-international-court-of-justice/8C4202BF7E6BB263FA0144919545BB9C#fndtn-contents**.
  - The World Court's exclusive resolution of inter-state disputes has become one of the cornerstones of its identity. This insightful critique challenges the implication that individuals have little importance in such disputes as a result, revealing their relevance in a myriad of disputes beyond those centered on violations of multilateral human rights treaties. Arguing for individuals' enhanced integration, it unveils a multitude of procedural practices with unquenched potential. It also carefully unpacks the Court's legal reasoning antithetical to individuals' critical relevance in traditionally state-centric territorial or maritime disputes, amongst others. Critically analysing and evaluating the legal and political underpinnings for the Court's approaches and state litigants' choices from a lens of social idealism, this pioneering study sheds light on the imbalance between individuals as key stakeholders in inter-state disputes and the degree to which they are treated as such in law and practice.
- Caroline Vicheti Shilaho, *The Role of State Parties to the Rome Statute in the Interpretation of the Statute* (Brill 2025), **https://brill.com/display/title/71960**.
  - This book offers a groundbreaking and thought-provoking examination of the intricate interplay between the role of State Parties to the Rome Statute in the interpretation of the Statute, particularly when the International Criminal Court (ICC) holds the explicit authority to do so. Utilizing the interpre-

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tation rules under Article 31(3) of the Vienna Convention on the Law of Treaties, it demonstrates how State Parties, through their subsequent agreements and practice, continue to influence treaty interpretation under the Rome Statute. The book highlights specific examples where State Parties have enacted amendments to the rules and passed resolutions during related ongoing ICC cases, prompting questions about their influence on the ICC's interpretive decisions. The nuanced relationship between State Parties and the ICC in interpreting the Statute is explored, revealing the inherent tension that emerges from the overlapping interpretive roles. It provides insightful recommendations for navigating and alleviating such tensions. ■

Notable Judgments & Decisions

ECtHR Rules on Georgia Protests

Craig D. Gaver, Washington, D.C.

On 11 December 2025, the European Court of Human Rights' Grand Chamber issued its Judgment in *Tsaava and Others v. Georgia* (application nos. 13186/20 and others). The collected cases concerned Georgian authorities' treatment of protestors outside the Parliament building in Tbilisi in June 2019.

On the night of 20 June 2019, protestors and journalists gathered in response to a member of the Russian Duma delivering a speech in Russian from the Speaker's chair of the Georgian Parliament. Twelve thousand Georgians gathered in response, which eventually occupied the entire space in front of the building. Hours later, individuals attempted to break a police cordon around the building, which triggered a physical response (paras. 19-26). Although the tension was initially diffused, the situation escalated later that evening into the early morning, culminating in security forces deploying "kinetic impact projectiles," tear gas, and water cannons on those still present (paras. 29-43). Police arrested 342 individuals; over 200 were injured, including approximately 80 police officers and 40 journalists.

The various applicants sustained injuries during the incident and alleged violations of Articles 3 (prohibition of torture, inhuman or degrading treatment or punishment), 10 (right to expression) and 11 (right of association) of the European Convention on Human Rights. At a previous stage, the Court's Fifth Section found a violation of the procedural limb of Article 3.

The Grand Chamber's judgment held that Georgian authorities used excessive force against protestors and journalists. It found a substantive violation of Article 3 (paras. 302-353), drawing upon the Court's jurisprudence on less-lethal weapons to affirm minimum requirements of a State's regulation and use of kinetic impact projectiles in crowd management. The Grand Chamber also found a violation of the procedural limb of Article 3 (paras. 274-301), given the authorities' failure to carry out an effective criminal investigation into the authorities' conduct.

With respect to Article 10, the Grand Chamber highlighted the positive obligation for States to provide an effective system for the protection of journalists acting in their "watchdog" role during protests (paras. 354-403). This is "particularly important" as "their presence is a guarantee that the authorities can be held to account for the way in which they act towards demonstrators and the public at large" (para. 391). Likewise, the Court found a violation of Article 11 arising from the authorities' use of force in dispersing the protest (paras. 404-445).

CJEU finds that Danish housing laws may breach ethnic anti-discrimination rules

On 18 December 2025, the Court of Justice of the European Union delivered its preliminary ruling in **Case C-417/23**, concerning the compatibility of Denmark's public housing legislation with EU anti-discrimination law. The case arose from redevelopment measures targeting designated "transformation areas," neighborhoods identi-

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fied by socioeconomic indicators such as unemployment, crime, education, or income levels, together with the criterion that more than 50% of residents are "immigrants from non-Western countries and their descendants" over a five-year period. Under the Danish Law on Public Housing, authorities must adopt development plans to reduce the proportion of public family housing in such areas by 2030, including through the sale or demolition of housing units or the termination of existing leases. The disputes before the Danish national court concerned lease terminations in two residential areas.

The referring Danish court asked whether this legislative framework constituted direct or indirect discrimination contrary to Directive 2000/43/EC ("Racial Equality Directive"). The Court of Justice first confirmed that the Danish public housing regime falls within the Directive's material scope because it involves the provision of housing services for remuneration, even where the housing is administered by non-profit bodies.

Addressing the concept of ethnic origin, the Court emphasised that it derives from a combination of factors, including nationality, language, religion, cultural background, and traditions. No single indicator, such as nationality or country of birth, can alone determine ethnic origin, but such elements may be relevant when assessed together and in context.

Furthermore, the Court did not itself conclude that the Danish legislation constitutes direct discrimination. Instead, it held that the national court must determine whether the criterion based on the proportion of "immigrants from non-Western countries and their descendants" effectively results in differential treatment on the ground of ethnic origin. In particular, the national court must assess whether residents of transformation areas face less favourable treatment than residents of comparable neighbourhoods, such as an increased risk of early lease termination and loss of housing.

If direct discrimination ultimately is not established, the national court must still examine whether the legislation amounts to indirect discrimination within the meaning of Article 2(2)(b) of the Directive. This would arise if a seemingly neutral rule disproportionately disadvantages persons belonging to particular ethnic groups. In that case, the national court must assess whether the legislation pursues a legitimate public interest, and whether the measures adopted are proportionate and compatible with fundamental rights, including the right to respect for the home under Article 7 of the Charter of Fundamental Rights of the European Union.

ICC Pre-Trial Chamber Allows Duterte Proceedings to Advance

On 26 January 2026, the Pre-Trial Chamber of the International Criminal Court issued a **Decision** on the Defence Request for an Indefinite Adjournment and Mr. Duterte's fitness to take part in the pre-trial proceedings. Arising out of the Situation in the Republic of the Philippines, the defendant, the Philippines' former president, requested an indefinite adjournment on the basis that he "is not fit to stand trial as a result of cognitive impairment in multiple domains" (para. 5).

To assess the request, the Chamber appointed a panel for three experts, whose identities are redacted in the decision, in forensic psychiatry; geriatric and behavioural neurology, and experience in "the examination of an elderly person on fitness to participate in judicial proceedings"; and neuropsychology, respectively.

The Chamber determined that Duterte was fit to participate in the pre-trial proceedings, but decided to put into place certain protective measures recommended by the panel of experts. Although there was a difference of opinion among the experts about whether, and the extent to which, the defendant suffered from a redacted condition, the conclusions of the panel were "clear and unanimous" that Duterte had the functional mental capacity to understand the charges against him, follow the evidence, and instruct his counsel in his defense (paras. 32-33). The Chamber denied the defense's request for a hearing to question the experts. Given his sufficient level of cognition, and in light of the relevant legal principles and medical examination, the Chamber was satisfied that Duterte is "able effectively to exercise his procedural rights and is therefore fit to take part in the pre-trial proceedings" (para. 45).

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Kosovo Specialist Chamber Denies Appeal of Reparations Award

A panel of the Court of Appeals Chamber of the Kosovo Specialist Chamber issued a **decision** denying the appeal and affirming the reparation order of Pjetër Shala, a former member of the Kosovo Liberation Army. The defendant was convicted in November 2024 for his involvement in war crimes during the Kosovo conflict, sentenced to 18 years' imprisonment and ordered to pay reparations to his victims. The Appeals Chamber later reduced the term of imprisonment to 12 years.

Shala appealed the reparation order on five grounds. First, he argued that the Trial Panel erred in holding reparation proceedings before the first-instance findings had become final, which breached due process rights by deciding civil liability on the basis of non-definitive findings (paras. 64-71). The Appeals Panel disagreed, finding that the current reparation proceedings did not affect, and therefore were not prejudicial to, Shala's right to fair and expeditious proceedings (para. 71). Second, the Appeals Panel rejected his claim that the Trial Panel had incorrectly defined and applied the law of causation (paras. 72-101). The Appeals Panel similarly rejected his third ground of alleged errors in presuming specific harm and making arbitrary awards, when the Trial Panel had applied a "balance of probabilities" standard for the reward of reparations (paras. 102-122).

Shala's fourth ground of appeal concerned alleged errors regarding compensation for undemonstrated loss (paras. 123-149). In light of a victim-centered approach to reparations, the Trial Panel primarily relied on the Victims Request for Reparations to determine Shala's amount of total financial liability, both for loss of earnings and loss of opportunities and for medical expenses. Finally, the Appeals Panel found that the overall award of reparations, EUR 208,000, was not disproportionate to the findings of Shala's role in the crimes (paras. 150-175). As each of his grounds of appeal failed, the Appeals Panel denied the appeal in the entirety and affirmed the Reparation Order (para. 176). ■

Opportunities

Conferences, Webinars & Programs

Inter-Judicial Dialogue on Climate Change and Human Rights

Climate change has become a profound human rights challenge, increasingly addressed by courts worldwide. This one-day academic workshop brings together judges from the European Court of Human Rights and the Inter-American Court of Human Rights, alongside leading scholars and practitioners, to explore how human rights law is shaping judicial responses to the climate crisis. Through comparative discussion of landmark cases and advisory opinions, the event fosters inter-judicial dialogue, mutual learning, and the development of shared approaches to climate justice across regional human rights systems (April 17, Vienna/Hybrid).
https://events.ceu.edu/2026-04-17/inter-judicial-dialogue-climate-change-and-human-rights

Conflict Unbound? Revisiting International Organizations and Contestation

The ESIL Interest Group on International Organizations welcomes submissions for the interest group workshop taking place as part of the ESIL Annual Conference on Thursday, 3 September 2026, 09.00-12.00, in Malaga and online.
https://esil-sedi.eu/wp-content/uploads/2026/02/ESIL-IG-IGIO-Call-Pre-Annual-Conference-2026-IG-Workshop.pdf

The European Union as a sanctioning actor: Legal and institutional developments

The Centre for the Law of EU External Relations (CLEER), the T.M.C. Asser Institute and the Multidisciplinary International Network on Sanctions (MINOS) operating at Ghent University invite abstracts for a conference on 'The European Union as a sanctioning actor: Legal and institutional developments' that will take place on 11 December 2026 at the premises of the T.M.C. Asser Instituut in The Hague.
https://www.asser.nl/news/call-for-paper-the-european-union-as-a-sanctioning-actor-legal-and-institutional-developments/

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Job Postings & Other Opportunities

How do scholars of public international law choose their research methods?

Researchers at Leiden University are conducting a new study to develop a better understanding of the methodological landscape in the field of public international law. Researchers in this field are invited to take a short survey, available at **https://leidenuniv.eu.qualtrics.com/jfe/form/SV_cDgM04LRCnF9csm**.

The survey takes less than 10 minutes to complete and includes questions about the respondent's background, current position, research methods, and publication choices. Participation in this study is voluntary and can be terminated at any time, for any reason.

The research team consists of Cecily Rose, Misha Plagis, Johanna Trittenbach, and Nicholas McGuire, and can be contacted at **methodssurvey@law.leidenuniv.nl**. ■

Reader Survey

The ICTIG Newsletter archives are available on the **ICTIG page** of the ASIL website. 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 **ictignewsletter@gmail.com**.