

International Courts & Tribunals Interest Group Newsletter

Introductory Note

This inaugural issue of the International Courts and Tribunals Interest Group (ICTIG) newsletter was the result of several months of work by its editors, Lisa Reinsberg and Sara Ochs, both of whom have served on the ICTIG's Advisory Board since 2019. Lisa and Sara carefully considered various topics and formats to determine what would be most beneficial to the interest group, drafted the request for submissions, and edited the final document you are reading. The intention is to publish this newsletter, with Lisa and Sara ably at the helm, every quarter going forward. The ICTIG newsletter provides one more method of communication between the ICTIG leadership and its membership. We hope that you will read with interest about ICTIG events, projects, and other announcements.

-David Bigge and Freya Baetens, ICTIG Co-Chairs

The Newsletter

The International Courts and Tribunals Interest Group invites submissions to the newsletter on an ongoing basis. We 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).

Interest Group Announcements

Leadership News

We sincerely thank outgoing ICTIG Co-Chair Celia Goldman for her leadership over the past three years, and warmly welcome Freya Baetens as the new Co-Chair.

The ICTIG Advisory Board welcomed new members in July, from a wonderful group of interested ICTIG members. Davinia Aziz, Philipp Kotlaba, Chad Farrell, and Lucia Solano joined Celia Goldman, Stuart Ford, Sun Kim, Massimo Lando, Sara Ochs, and Lisa Reinsberg on the Advisory Board. Many thanks to all those who expressed an interest in joining.

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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.



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ICTIG Events

Roundtable on International Courts and COVID-19

On September 29, the ICTIG will host a virtual roundtable on the theme of “International Court Administration in Pandemic Times: Challenges and Opportunities.” The event will gather registrars, members of secretariats, and other administrative personnel from international judicial institutions to discuss best practices for continuity of operations during the pandemic and how these may impact the functioning of international courts and tribunals in the future. Representatives of more than 20 international courts and tribunals have confirmed their participation. In order to encourage a frank discussion among peers, the roundtable will be private and off-the-record.

Annual Meeting Panel

At the ASIL Annual Meeting in June, the ICTIG hosted a panel entitled “The U.S. and International Courts and Tribunals: A Historical Approach to the Current Dilemma,” which can now be [viewed online](#). ICTIG Co-Chair David Bigge moderated the conversation with speakers Amalia D. Kessler (Stanford University), Harold Hongju Koh (Yale Law School), Natalie L. Reid (Debevoise & Plimpton LLP), and Jennifer Thornton (Arent Fox LLP). Curtis, Mallet-Prevost, Colt & Mosle LLP sponsored the event.

During the panel, Prof. Koh explained how the **Jay Treaty** helped avoid a follow-on war immediately after the American revolution, while fostering the modern generation of international arbitration, and skillfully dealing with politics, diplomacy, and the law. Prof. Kessler referred to the U.S.-Mexico **General Claims Commission** and explained why both countries engaged in this mechanism and continued to do so repeatedly over time, dealing with a wide range of matters and a high number of claims. Ms. Reid discussed the **Shufeldt** arbitration, explaining why parties resorted to this *ad hoc* mechanism instead of a more settled procedure like the PCA, and delving into the resemblance to contemporaneous investor-State arbitration. Ms. Thornton, in turn, addressed the **Alabama Claims** arbitration and examined its significance as the first case in which two powerful States agreed to submit to arbitration a central political question.

By analyzing these historical examples, the panel drew important lessons for arbitration today, including with regard to the nomination of arbitrators, the impossibility for a State to refer to domestic law to disregard international law, the substantial interplay between diplomacy and the law, and how States have changed their approaches to international courts and tribunals in the 21st century. ■

Developments at International Courts & Tribunals

International Courts & Tribunals’ Responses to COVID-19

Like other institutions, international courts and tribunals have had to adapt in response to the COVID-19 pandemic. Many have altered their working methods, computation of deadlines, hearings, and overall capacity. Some of those changes, especially with regard to time limits, will soon end or have already ended. The **Court of Justice of the European Union**, for example, has [announced](#) it will no longer extend procedural time limits as of September 1, 2020.

Some courts and tribunals have issued substantive guidance to states on adhering to their international obligations during the pandemic. The **Inter-American Court of Human Rights**, for example, has published a [statement](#) on COVID-

19 and Human Rights, which is included in its new [Virtual Information Center](#) on that topic.

Many institutions have issued new practice directions or rules with respect to hearings. These include the **International Criminal Court Guidelines** for the Judiciary Concerning the Holding of Court Hearings During the COVID-19 Pandemic. The non-binding guidelines recognize the discretion of the Pre-Trial Chamber, the Trial Chamber, and the Appeals Chamber to conduct hearings in person within the ICC courtrooms, remotely through virtual means, or through a mix of both methods. The Guidelines also include an Occupational Health and Safety Protocol that provides numerous directions for safely conducting in-person hearings. Similarly, the **African Court on Human and Peoples’ Rights** has issued new [practice directions](#) for vir-

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Developments at International Courts & Tribunals —continued from page 2

tual sessions, and the **International Court of Justice** has adopted **amended rules** to address virtual hearings and judgment readings.

Selection of ICC Prosecutor

This December, the ICC will hold elections for a new ICC Prosecutor. The individual elected will relieve Fatou Bensouda of her role upon the termination of her contract on June 15, 2021, and will serve a nine-year term. On June 30, 2020, the **Committee on the Election of the Prosecutor** issued a report containing its shortlist of candidates, which includes Morris A. Anyah of Nigeria, Fergal Gaynor of Ireland, Susan Okalany of Uganda, and Richard Roy of Canada. At the end of July, virtual hearings were held, during which states parties and civil society were provided the opportunity to question each of the four shortlisted candidates. Recordings of the hearings are available [here](#). The election will be held in December 2020 at the 19th Assembly of States Parties, at which time the Assembly of States Parties will vote on the shortlisted candidates. Additional information regarding the candidates can be found [here](#), while general information regarding the election process is available [here](#).

Election of ICC Judges

In addition to the selection of a new ICC Prosecutor, the ICC will hold elections for six open judicial seats this year. Collectively, the states parties have nominated **21 candidates** who will be voted on during the 19th session of the Assembly of States Parties in December 2020. Each of the newly elected judges will serve a nine-year term.

ITLOS Elections

The terms of seven members of the International Tribunal for the Law of the Sea will expire on September 30, 2020. Elections to fill their seats are expected to take place in August or September, due to the rescheduling of the **Thirtieth Meeting of States Parties**, which was originally planned for June. Ten states nominated **candidates**, including Zimbabwe, which later **withdrew** its candidate. ITLOS is composed of 21 members elected by states parties to the United Nations Convention on the Law of the Sea. As pointed out by Judge Chadha in the most recent ITLOS **newsletter**, only three of 46 judges to serve on the tribunal have been women.

Election of ICJ Judges

At the 75th session of the UN General Assembly, to be held **virtually** in September, the General Assembly and Security Council will **elect** five judges to the International Court of Justice, for nine-year terms. The terms of current judges Giorgio Gaja (Italy), Yuji Iwasawa (Japan), Julia Sebutinde (Uganda), Peter Tomka (Slovakia), and Xue Hanqin (China) will expire on February 5, 2021. The eight **candidates** include four incumbents.

Withdrawals from AfCHPR's Individual Complaint Procedure

Earlier this year, Benin and Côte d'Ivoire both notified their withdrawal of acceptance of the African Court on Human and Peoples' Rights' jurisdiction over complaints presented by individuals and nongovernmental organizations. Tanzania withdrew its acceptance in late 2019, following Rwanda's withdrawal in 2016. In keeping with the AfCHPR's **ruling** regarding Rwanda's withdrawal, the new withdrawals will take effect one year from their presentation. This means that the AfCHPR would no longer have jurisdiction over individual and NGO complaints against Benin, Côte d'Ivoire, and Tanzania on March 25, 2021, April 29, 2021, and November 15, 2020, respectively. The AfCHPR has recently posted on its website information and documentation concerning **declarations** of acceptance, or withdrawal of acceptance, of its jurisdiction over individual and NGO complaints.

Al Hassan Trial Opened at ICC

On July 14, 2020, the trial in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Hamoud* began before ICC Trial Chamber X. Following the reading of the charges against Al Hassan, Prosecutor Fatou Bensouda made her opening statement. The trial is set to resume on August 25, 2020, at which time the Prosecution will present its evidence and witnesses.

Al Hassan is charged with war crimes and crimes against humanity committed in Timbuktu, Mali in the context of a widespread and systematic attack committed by Ansar Eddine, of which he is an alleged member. More information about and materials from the opening days of trial can be accessed [here](#).

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New Publications

Books

We are proud to share that ICTIG members have recently published the following books:

- Christian M. De Vos, **Complementarity, Catalysts, Compliance: The International Criminal Court in Uganda, Kenya, and the Democratic Republic of Congo** (Cambridge University Press 2020).
- Mark Weston, John E. Noyes, and Leila Nadya Sadat, **International Law: Cases and Commentary (6th edition)** (West Academic 2020).
- Francine Hirsch, **Soviet Judgment at Nuremberg: A New History of the International Military Tribunal after World War II** (Oxford University Press 2020).
- Michael P. Scharf, Milena Sterio, and Paul R. Williams, **The Syrian Conflict's Impact on International Law** (Cambridge University Press 2020).

Articles & Book Reviews

The latest issue of *The Law & Practice of International Courts and Tribunals*, published by Brill, is now available online. In addition, ICTIG members have recently published the following articles:

- Rachel Finn, **Fracture for Good? Using the Acquittal in *The Prosecutor v. Jean-Pierre Bemba Gombo* as an Impetus to Clarify and Strengthen the Development of International Criminal Law**, 51 *Geo. J. Int'l. Law* 691 (2020).
- Zachary D. Kaufman, **Legislating Atrocity Prevention**, 57 *Harv. J. on Legis.* 163 (2020).
- Birju Kotecha, **The International Criminal Court's Selectivity and Procedural Justice**, 18 *J. Int'l Crim. Just.* 107 (2020).
- Sara L. Ochs, **A Renewed Call for Hybrid Tribunals**, 52 *N.Y.U. J. Int'l L. & Pol.* 351 (2020).
- Md. Rizwanul Islam, **The Case of Palestine Against the USA at the ICJ: A Non-Starter or Precedent-Setter?**, 48 *Ga. J. Int'l & Comp. L.* 1 (2019).

Notable Judgments & Decisions

Special Tribunal for Lebanon, Judgment in *Prosecutor v. Ayyash et al.* (STL-11-01)

By Sara L. Ochs

On August 18, 2020, the **Special Tribunal for Lebanon (STL)** pronounced its long awaited **judgment** in *The Prosecutor v. Ayyash et al.*, concerning the February 14, 2005 Beirut attack that killed 22 people, including former Prime Minister Rafik Hariri. The STL initially planned to announce the judgment on August 7th, but postponed in light of the August 4th explosion in Beirut.

The *Ayyash et al.* case involves four defendants, Salim Jamil Ayyash, Hussein Hassan Oneissi, Assad Hassan Sabra, and Hassan Habib Mehri, all of whom were charged with conspiracy to commit a terrorist attack, along with related charges pursuant to an **amended consolidated indictment**.

Defendant Ayyash was also charged with committing a terrorist attack by means of an explosive device; intentional homicide of Rafik Hariri and 21 others with premeditation by using explosive materials; and attempted intentional homicide of 226 persons. The trial, which was enormously costly and lasted from January 2014 to September 2018, has proven controversial for the court, as all four defendants were tried in absentia.

In its judgment, the Trial Chamber recognized that all of the evidence presented at trial was circumstantial, with most of the evidence seeking to tie the defendants to cell phones used by the perpetrators.

The Trial Chamber unanimously found defendant Ayyash guilty as a co-perpetrator of all charges contained in the consolidated indictment. It specifically determined that the Prosecutor had succeeded in proving beyond a reasonable doubt through cell phone records that Ayyash was a core member of the "assassination team," and had engaged in extensive surveillance of Mr. Hariri in the months preceding the attack, prepared the attack, and knowingly agreed to murder Mr. Hariri using an explosive device.

The Trial Chamber also unanimously found the remaining three defendants not guilty on all charges, finding the evidence insufficient to prove that they assisted in preparing the attack or subsequently shielding the perpetrators from justice by masterminding a false claim of responsibility.

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Notably, despite Ayyash's connections to Hezbollah, the Trial Chamber declined to find that Hezbollah or the Syrian Government played a role in the attack, although it recognized that both entities had motives to do so.

Iran-US Claims Tribunal, Partial Award in Case No. A15 (II:A)

By Laura Yvonne Zielinski, Holland & Knight

(Note: The author participated in the representation of Iran in this case while working at Eversheds Paris.)

On 10 March 2020, the Iran-US Claims Tribunal rendered its partial award No. 604-A15 (II:A)/A26 (IV)/B43-FT in Case No. A15 (II:A), ordering the United States to pay Iran over USD 29 million in damages, including decades of interest, and to return several properties that had been frozen during the 1979 hostage crisis.

Case A15 (II:A) was one of multiple state-state cases pending before the Iran-US Claims Tribunal and related to Iran's claim that the United States had failed to return all of the required Iranian properties to Iran in violation of Paragraph 9 of the Algiers Declarations. In a partial award on 6 May 1992 (Partial Award No. 529-A15-FT), the Tribunal had made preliminary findings with regard to the properties that were subject to the transfer obligation, deciding that the obligation applied to all tangible properties that were solely owned by Iran or its entities.

The March 2020 partial award was a follow-up award to the previous one intended to resolve all outstanding questions such as certain general issues and determinations relating to specific properties and possible damages.

Largely simplified, the Majority, in deciding which properties exactly had to be transferred by the United States to Iran, found that ownership corresponds to title. To understand to which properties Iran had title, the Majority referred to the general principles of private international law, which in turn led it to apply US domestic law as the *lex situs* of the properties.

Multiple judges authored concurring and dissenting opinions on a range of issues. Among them, Judge Bruno Simma and the three Iranian judges on the Tribunal issued separate opinions criticizing the Majority's resorting to private international principles, writing that, the case being an inter-state case based on a treaty, the question should have been decided by applying public international law rules alone.

Inter-American Court of Human Rights, Provisional Measures in *Vélez Lóor v. Panama*

By Lisa Reinsberg

On June 29, 2020, the Inter-American Court of Human Rights adopted provisional measures in the case of *Vélez Lóor v. Panama*, ordering the state to take the necessary measures

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ICJ Hearings in *Qatar v. United Arab Emirates* ICJ Hearings in *Iran vs. United States*

From August 31 to September 7, 2020, the International Court of Justice will hold hearings in *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*. Per its **announcement**, the parties will participate virtually, while the judges will participate either in-person or virtually. The hearings will concern the UAE's preliminary objections. Qatar has **alleged** that the UAE discriminated against Qataris on the basis of their national origin when it expelled Qataris from its territory and interfered with their human rights, beginning in June 2017.

The International Court of Justice will also hold hearings, from September 14 to 21, in the case of *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*. Per the court's **announcement**, the parties will participate virtually, while the judges will participate in-person or virtually. The hearings will concern the United States' preliminary objections. Iran has **alleged** that the United States violated the 1955 Treaty in May 2018 when it reimposed sanctions and other measures against Iran and its companies and nationals, which had been lifted pursuant to the Joint Comprehensive Plan of Action regarding Iran's nuclear program. ■



Notable Judgments & Decisions —continued from page 5

to protect the rights to health, personal integrity, and life of people detained in the La Peñita and Lajas Blancas migrant detention facilities, in view of the COVID-19 pandemic. (In May 2020, the President of the IACtHR adopted **urgent measures** in the case, while the court was not in session, prior to a virtual public hearing.) The IACtHR expressed concern at the overcrowding, inadequate infrastructure and provision of services, and the number of detainees testing positive for COVID-19 in the detention centers.

The court considered that the “exceptional” situation posed by the pandemic justified a decision on the request for provisional measures - apart from its review of Panama’s compliance with its prior judgment on the merits in the case. In its 2010 **merits** judgment, the IACtHR held Panama responsible for violating the human rights of Jesús Tranquilino Vélez Loo, who had been detained and mistreated in prison following his arrest on an immigration matter. The IACtHR ordered the state to ensure it had adequate migrant detention centers, to avoid detaining migrants in prisons. Mr. Vélez Loo was **released and deported** back to Ecuador in 2003. However, the case remained in the supervision stage, pending Panama’s full compliance with the judgment.

The *Vélez Loo* provisional measures are among the first from any regional human rights body to address the risks from COVID-19 in detention settings (on May 3, the Inter-American Commission on Human Rights issued **precautionary measures** in favor of a detainee in Venezuela, in which the requesting party included COVID-19 among the risk factors).

Judges L. Patricio Pazmiño Freire and Eduardo Vio Grossi wrote concurring and dissenting opinions, respectively.

African Court on Human and Peoples’ Rights, Judgment in *Suy Bi Gohore Emile and Others v. Côte d’Ivoire*

By Lisa Reinsberg

On July 15, 2020, the AfCHPR published its **judgment** in a case concerning the independence and impartiality of Côte d’Ivoire’s electoral commission. The Court held that, in practice, the state had not ensured that its electoral oversight bodies were sufficiently independent or that civil society and opposition parties had adequate influence in nominating members of those bodies.

The AfCHPR also determined that it had competence to decide - through its complaint process - whether a state had complied with a prior judgment. In this case, the court found that Côte d’Ivoire had legislated changes to the electoral commission’s composition, as ordered in its judgment in *APDH v. Côte d’Ivoire*, and thus was in compliance, despite its inadequate implementation of those changes.

The judgment came less than three months after Côte d’Ivoire notified its **withdrawal** from the Court’s jurisdiction over complaints presented by nongovernmental organizations and individuals. The withdrawal was understood as a response to the AfCHPR’s provisional measures ordering the state to suspend its planned arrest of Guillaume Soro, an opposition candidate in this year’s presidential election.

Extraordinary Chambers in the Courts of Cambodia, Decision on Appeal on Termination of Case 004/2

By Lisa Reinsberg

On August 10, 2020, the Extraordinary Chambers in the Courts of Cambodia released the Supreme Court Chamber’s **decision** regarding the effective termination of Case 004/2, in response to the International Co-Prosecutor’s appeal. The case, which has been before the ECCC since 2009, concerned the investigation of Ao An for genocide of the Cham people, crimes against humanity, and violations of the 1956 Cambodian Penal Code allegedly committed during the Khmer Rouge regime.

The National Co-Prosecutor and International Co-Prosecutor had disagreed as to whether Ao An was a senior Khmer Rouge leader or among the individuals most responsible for the relevant crimes and, therefore, whether he was subject to the ECCC’s jurisdiction. The co-investigating judges issued a split decision on that question, as did the Pre-Trial Chamber on appeal. The next procedural step was left uncertain. The International Co-Prosecutor proceeded to prepare for trial, while the National Co-Prosecutor considered the case terminated. When the Trial Chamber failed to begin proceedings against Ao An, the International Co-Prosecutor appealed against that de facto termination. On appeal, the Supreme Court Chamber held that the competing orders were unlawful and that, therefore, there was no valid indictment against Ao An.

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Opportunities

Conferences, Webinars & Programs

Law via the Internet Conference 2020

The annual **Law via the Internet Conference** hosted by the Free Access to Law Movement will be held virtually on September 22-23.

Protecting Civic Space in Africa

This 4-part **webinar series** throughout August is jointly hosted by the Robert F. Kennedy Human Rights Center and the Pan African Lawyers Union and will focus on strategic litigation for the protection of civic space in African regional courts.

International Law and the 2020 Presidential Election: What is at Stake?

ASIL will be hosting a **six-part online series**, beginning in August, that will examine the impact the 2020 U.S. presidential election will have on international law. The series will specifically explore the following topics: cyber threats & election interference, trade & investment, climate change & the environment; immigration & asylum, use of force & counterterrorism; and multilateralism & international institutions.

Mixed Arbitral Tribunals: 1919-1930: An Experiment in the International Adjudication of Private Rights

This **conference** hosted by the Max Planck Institute Luxembourg for Procedural Law will take place on October 22-23.

Society of International Economic Law Conversations

The Society of International Economic Law (SIEL) has launched **SIEL Conversations**, a monthly series of webinars on international economic law.

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In response to the Supreme Court Chamber's decision, the co-investigating judges have now **ordered** Case File 004/2 to be sealed and archived. ■

Calls for Papers

Journal of International Criminal Justice Special Issue: New Technologies and the Investigation of International Crimes

New technologies are fundamentally changing the way that international crimes are investigated and how accountability for such crimes is pursued. Digital technologies have made the commission of war crimes, crimes against humanity, and genocide visible in new and compelling ways, expanding the toolkit available to identify such crimes and hold perpetrators to account.

The guest co-editors, Emma Irving, Alexa Koenig, Yvonne McDermott, and Daragh Murray, together with the *Journal of International Criminal Justice* Editorial Board, invite paper submissions for a forthcoming symposium on new technologies and the investigation of international crimes, to be published in July 2021. The symposium will bring together theoretical, doctrinal, comparative and practical perspectives on the challenges and opportunities of new technologies for the investigation of international crimes.

The **call for papers** indicates the deadline for submissions is October 31, 2020.

International Review of Human Rights Law

The **International Review of Human Rights Law** invites submissions for its sixth issue, to be released in February 2021. The deadline for submissions is September 29, 2020. Please see the **call for papers** for more details.

Yearbook of International Humanitarian Law Volume on Expert Panel Manuals

Interested authors should send their submission before October 1, 2020 to the Managing Editor of the Yearbook,

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Member News

ICTIG members, please send news of your promotions, new positions and appointments, awards, events, and other developments to share in the ICTIG Newsletter. See the first page of this newsletter for submission guidance.



Opportunities —continued from page 7

Rebecca Mignot-Mahdavi LL.M. (R.Mignot-Mahdavi@asser.nl), according to the [call for papers](#). Articles should be submitted in conformity with the [Yearbook's guidelines](#). The Editorial Board aims to publish Vol. 23 (2020) at the end of the ensuing year, in December 2021 at the latest.

The Brazilian Journal of International Law Special Issue: Challenging the International Law of Immunities: New Trends on Established Principles?

The Brazilian Journal of International Law invites submissions for a special issue on "Challenging the International Law of Immunities: New Trends on Established Principles?" to be published in March 2021. The issue will be edited by Lucas Carlos Lima (Universidade Federal de Minas Gerais), Loris Marotti (Università degli Studi di Milano) and Paolo Palchetti (Sorbonne Law School). The deadline for submission is October 20, 2020, per the [call for papers](#).

Job Postings & Other Opportunities

Post-Doc Fellowship in Migration & Humanities

The [Mahindra Humanities Center at Harvard](#) invites applications for one-year (2021-2022) postdoctoral fellowships in connection with the Center's Andrew W. Mellon Foundation

seminar on the topic of migration and the humanities. More information and the online application are available on the [website](#). Applications are due November 6, 2020.

PluriCourts Research Fellowship

One research fellowship up to two years and three months is available at PluriCourts, a Centre for the Study of the Legitimate Roles of the Judiciary in the Global Order. The research fellow will study international courts and tribunals (ICs) concerning one or more of the research topics addressed by PluriCourts: the multidimensional legitimacy standards which include multilevel separation of authority, independence and accountability, performance and comparative advantages. Additional information on the role and how to apply can be accessed through the [job posting](#). ICTIG members, please send news of your promotions, new positions and appointments, awards, events, and other developments to share in the ICTIG Newsletter. See the first page of this newsletter for submission guidance. ■