American Society of International Law

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International Courts & Tribunals Interest Group Newsletter

Introductory Note

ICTIG is delighted to bring to you the Fall 2023 issue of our Newsletter. In October, we will be hosting an in-person event at Tillar House, details of which will be released shortly via e-mail. We are also exploring ways of collaborating with interest groups on international courts and tribunals of the European Society of International Law (ESIL) and the Latin American Society of International Law (LASIL).

We would like to draw your attention to an opportunity to collaborate with the ICTIG Advisory Board. After several years of committed service, Sara Ochs and Lisa Reinsberg will step down as Newsletter editors. We would like to thank them for having come up with the idea of an ICTIG Newsletter a few years ago and for having done such a terrific job. We are now in the process of finding two new editors for the Newsletter, who will work together with Sara and Lisa on the next issue and take over from mid-2024. For more information and instructions on how to express interest, please see the "Call for Newsletter Editor(s)" below. Do get in touch with Sara, Lisa or with us if you are interested in collaborating with ICTIG and the Society!

-Massimo Lando & Vladyslav Lanovoy, Co-Chairs

Call for Newsletter Editor(s)

The International Courts & Tribunals Interest Group is accepting applications for Newsletter Editor(s) to take over the curation and editing of its quarterly newsletter. Founding co-editors Sara Ochs and Lisa Reinsberg will be stepping down this year. The new Editor(s) would be invited to join the ICTIG Advisory Board and will assume responsibility for producing the newsletter, including by: coordinating with the ICTIG co-chairs and Advisory Board on the publication schedule and content, soliciting and reviewing member submissions, identifying and summarizing significant judgments and other content, identifying relevant calls for papers and other opportunities, and working with ASIL's graphic designer to format the newsletter.

Applicants should have familiarity with at least one area of international law and dispute settlement (such as human rights, international criminal law, inter-State or investor-State disputes), as well as interest in other areas. The Editor(s) would also benefit from experience preparing concise case summaries, proofreading, or editing. To apply, please email ictignewsletter@gmail.com with: 1) your CV; and 2) a paragraph explaining your interest in the Editor position. Applications are due October 15.

INSIDE THIS ISSUE

Developments at International Courts & Tribunals

CARICOM Administrative Tribunal Decides First Case

The Caribbean Community Administrative Tribunal (CCAT) has issued its first judgment on the merits, in the case of *Rowe v. CARICOM Secretariat*. The Tribunal's Statute, adopted in 2019, empowers the CCAT to decide complaints by staff members of the CARICOM Secretariat and other Caribbean Community institutions that have accepted its jurisdiction, with regard to labor and employment matters.

News item shared by Kerine Dobson.

IACtHR Extends Deadlines for Comments on Climate Change Advisory Opinions

The Inter-American Court of Human Rights has extended the deadline for presenting written comments on the request for an Advisory Opinion regarding the climate emergency to October 18.

European Data Protection Supervisor Finds CJEU Videoconference System to be Compliant

On July 14, the Court of Justice of the European Union announced that the European Data Protection Supervisor (EDPS) had adopted its final decision concerning the Court's contract with Cisco, a U.S.-based videoconferencing operator. The EDPS concluded that the arrangement meets the data protection standards of Regulation 2018/1725. The Court had referred the question to the EDPS in light of its *Schrems* II judgment of July 2020, which declared invalid the EU-U.S. Privacy Shield concerning personal data transfers from the European Union to the United States.

ECtHR Ends Temporary Measures Adopted after Turkey Earthquake

Following the earthquake in Turkey in February 2023, and the declaration of a state of emergency in the affected provinces, the European Court of Human Rights adopted measures suspending strict implementation of the application requirements and time limits concerning new and pending applications sent from those provinces. As of July 15, the Court announced that those measures will no longer be applied to new applications, but will continue to apply to applications lodged before July 15.

ICC Celebrates the 25th Anniversary of the Rome Statute

July 17, 2023 marked the twenty-fifth anniversary of the Rome Statute, the governing instrument for the International Criminal Court. To date, 123 countries have ratified the Rome Statute. The occasion was marked by a day-long event at the United Nations headquarters.

Square Kilometre Array Observatory (SKAO) Independent Employment Tribunal Opens

With the formal appointment of its judges and the adoption of its Regulations and Rules of Procedure in July 2023, the newest international administrative tribunal, the Square Kilometre Array Observatory (SKAO) Independent Employment Tribunal, came into being. The SKAO is a specialized international organization established in March 2019, that is dedicated to exploring the origins, evolution and future of the universe, using radio telescopes located in Western Australia and South Africa. Its "Global Headquarters" are at Jodrell Bank near Manchester, England.

The Tribunal's jurisdiction is broadly drawn *ratione personae*, including both current staff and candidates for recruitment; the Tribunal itself settles any issues arising regarding its jurisdiction. The judges are appointed by the Council of the Member States, after consultation with the Staff Association. While the Council has also laid down Rules of Procedure, the Tribunal may amend these following consultation of the Director General. Though the Tribunal is composed of only six judges, the Regulations provide for rulings both at first instance and on appeal. In principle, a first instance application is heard by a single judge, chosen on the basis of rotation, an equitable distri-bution of workload and availability. Where the "circum-stances of the case so require," an application at first instance may be heard by three judges. Appeals are heard by three judges, not including those who heard the application at first instance.

News item shared by Kieran Bradley.

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New Publications

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

Articles, Essays & Book Reviews

- Md. Rizwanul Islam, *A Tale of Too Little: Anti-Dumping Tariff between SAFTA Contracting Parties*, 57(5) Journal of World Trade 833 (2023).
- Md. Rizwanul Islam, The Murky State Practice on Recognition of Governments and the National Unity Government in Myanmar, 44(3) Houston Journal of International Law 447 (2023).
- Kathleen M. Maloney, Melanie O'Brien, & Valerie Oosterveld, *Forced Marriage as a Crime Against Humanity of 'Other Inhumane Acts' in the International Criminal Court's Ongwen Case*, International Law Review (2023).
- Cecily Rose, *Introduction*, *Symposium: Public Interest Litigation at the International Court of Justice*, 22 The Law & Practice of International Courts and Tribunals 2 (2023).

Books & Book Chapters

- Md. Rizwanul Islam, 'Judicial Lawmaking in Bangladesh: Looking Back and Into the Future' *in* M. Rafiqul Islam and Muhammad Ekramul Haque (eds), The Constitutional Law of Bangladesh: Progression and Transformation at Its 50th Anniversary (Springer Nature Singapore, 2023).

Developments at International Courts & Tribunals *—continued from page* 2

ICJ Extends Time Limits in Climate Change Advisory Proceedings

On August 9, the International Court of Justice announced a three-month extension of the time limits for the submission of written statements and comments in the advisory proceedings on the *Obligations of States in respect of Climate Change*. The new deadlines are: January 22, 2024 for written statements; and April 22, 2024 for written comments (by States and organizations that have presented written statements) on others' statements.

ICC Confirms Charges in Mokom Case

On August 24, 2023, Pre-Trial Chamber II of the International Criminal Court concluded its confirmation of charges hearing in *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka* within the Situation in the Central African Republic II. Mr. Mokom is alleged to have served as a senior leader of the Anti-Balaka movement, and in this role is charged with committing various war crimes and crimes against humanity including directing attacks against the civilian population, murder, rape, deportation and forcible transfer, and persecution between 2013 and 2014. The Defence, Prosecutor, and Legal representatives of the victims have been tasked with filing written submissions, following which the Pre-Trial Chamber will issue its decision on the confirmation of charges.

ITLOS Announces Hearing Schedule in Climate Change Advisory Opinion

On September 8, the International Tribunal for the Law of the Sea announced the revised schedule of public hearings relating to the Request for an Advisory Opinion by the Commission of Small Island States on Climate Change and International Law (COSIS). The hearings will take place between September 11 and 25, and will involve the participation of 35 States parties and three intergovernmental organizations, in addition to COSIS.

Seven ITLOS Judges to Begin Terms on October 1

The States parties to the UN Convention on the Law of the Sea elected seven judges to the International Tribunal for the Law of the Sea, in New York on June 14. The six new members and returning Judge Tomas Heidar (Iceland) will begin their nine-year terms on October 1. The new members are: Frida María Armas Pfirter (Argentina), Hidehisa Horinouchi (Japan), Thembile Elphus Joyini (South Africa), Osman Keh Kamara (Sierra Leone), Konrad Jan Marciniak (Poland), and Zha Hyoung Rhee (Republic of Korea). The candidates' bios were circulated to States parties in advance. ■

Notable Judgments & Decisions

ECOWAS Court Orders Niger to Compensate Farmers for Tributary Payments to Slavery-Era Land Owners

On May 30, the ECOWAS Court of Justice held that Niger breached Articles 3 and 5 of the African Charter on Human and People's Rights (the Charter) after its courts endorsed a practice whereby villagers were required to provide millet to a landowner as "tribute."

The applicant, Hassane Abdou Nouhou, brought suit on behalf of 260 families living in Danki village, Niger. Nouhou stated that his grandfather had been enslaved by the landowners, the Kourmo family, in the 19th century. After the abolition of slavery, the Kourmo family allowed Nouhou and others to settle the land that became Danki village in exchange for paying an annual tribute consisting of bundles of millet.

When the villagers stopped paying the tribute in 2007, the Kourmo family sued them in Niger's courts and secured favorable judgments. According to Niger, the Danki villagers had acknowledged the ownership of the land by the Kourmo family, and the payments by the villagers should not be construed as tribute to a master but rather as payment of rent.

The Court held that the payments amounted to discrimination, and thus by tolerating the payments, the Niger government breached its obligation to ensure non-discrimination among its citizens, as set out in Article 3 of the Charter. The Court further held that Niger was in breach of the applicants' right to development. The Court ordered Niger to pay 500,000 CFA Francs to each of the 260 citizens who had been required to pay the tribute.

The full text of the Court's judgment (Judgment No. ECW/CCJ/JUD/30/23) does not yet appear to be publicly available, but a summary is available.

ECtHR Finds Violation in Switzerland's Denial of Family Reunification to Eritrean Asylum Seekers

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

The European Court of Human Rights (ECtHR) decided a number of joined cases concerning the rights of asylum seekers from Eritrea, in its July 4 judgment in B.F. *and Others v. Switzerland*. The ECtHR had to rule on a number of issues connected to positive obligations of States pursuant to the right to respect for family life that is protected under Article 8 of the European Convention on Human Rights (ECHR). Specifically, Switzerland had refused requests for family reunification based on the failure of persons of Eritrean origin who were already living in Switzerland to secure the requirement of financial independence. In principle, States that are parties to the ECHR enjoy a certain margin of appreciation as to how they fulfill their obligations under the Convention. This margin of appreciation, however, must not be abused in order to deny human rights altogether. Therefore, the Court concluded that with regard to the non-reliance on social assistance in the context of refugee family reunifications the margin of appreciation of States is significantly less broad than, for example, in the context of waiting times. Accordingly, the ECtHR requires States to employ a certain level of flexibility in this regard. The requirements must not be impossible to meet and a fair-balance assessment is necessary. In imposing a financial independence requirement for family reunification, the ECtHR held Switzerland had exceeded the margin of appreciation and violated the applicants' Article 8 rights.

ECtHR Upholds Right to be Forgotten in Belgian Newspaper Case

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

The right to be forgotten can conflict with the freedom of expression, including in particular journalistic freedoms. In the case of *Hurbain v. Belgium*, which the European Court of Human Rights (ECtHR) decided on July 4, a newspaper publisher had been ordered to make changes to an online article. The article had been published legally 20 years earlier and concerned a fatal accident. The driver who had caused the accident invoked the right to be forgotten. The newspaper publisher submitted an application to the ECtHR, arguing that the Belgian court's order that he anonymize references to the driver violated Article 10 (freedom of expression) of the European Convention on Human Rights (ECHR). In 2021, an ECtHR chamber rejected the publisher's arguments.

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In its recent decision, the Grand Chamber used the opportunity to explain the material scope of the right to be forgotten, which emerged decades after the ECHRhad entered into force. The Grand Chamber defined the right as a non-autonomous human right connected to the right to respect for reputation and provided guidance on how to balance the competing interests. While the Court recognized the need to preserve the accuracy of publication records, it concluded that the request to anonymize the article in question, without otherwise altering the content, was the most effective option for the protection of the rights of the driver, as it would not create too much of a burden on the publisher and would therefore allow for an effective balancing of the competing rights. As a result, the Court concluded that the interference with the publisher's right under Article 10 ECHR was neither disproportionate nor unnecessary.

ICJ Denies Request to Modify Provisional Measures in *Armenia v. Azerbaijan*

Philipp Kotlaba

On July 6, the International Court of Justice (ICJ) declined an Armenian request to modify a provisional measures order in its case against Azerbaijan under the Convention on the Elimination of All Forms of Racial Discrimination (CERD).

Since the institution of proceedings in the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Armenia v. Azerbaijan*), Armenia has made a number of requests for provisional measures as well as for their modification. The first group of requests concerned alleged abuses of Armenian prisoners of war, hostages, and other detained persons after the 2020 conflict in Nagorno-Karabakh. The Court granted an order on these measures,but denied a subsequent request to expand its protection of captured persons beyond the context of the 2020 conflict. The second group of requests arose from the Azeri blockade of the Lachin Corridor, a narrow road linking ethnic Armenians in Nagorno-Karabakh with Armenia. In 2023, the Court ordered Azerbaijan to ensure free movement along the Lachin Corridor, after which Armenia requested a modification requiring Azerbaijan to withdraw newly deployed personnel to military checkpoints in the Corridor. It is in relation to this request that the ICJ issued the July 6th order.

The key question facing the Court was whether there had been "a change in the situation" to justify modification of the previous order within the meaning of Article 76, paragraph 1 of the Rules of Court. The ICJ considered that, even if the new developments alleged by Armenia constituted a change in situation, the original (Feb. 22, 2023) order was sufficiently broad to address that change. The Court found that as Azerbaijan was under an obligation to ensure "unimpeded movements," the order applied "without limitation to the cause of the impediment," including with regard to the disruption of movement along the Lachin Corridor caused by the establishment of checkpoints.

ECOWAS Court Finds Insufficient Evidence of Corruption in Ghana's Management of Gold Resources

On July 10, the ECOWAS Court of Justice dismissed a case brought by three NGOs — Transparency International, Ghana Integrity Initiative, and Ghana Anti-Corruption Coalition — against Ghana alleging corruption in the management of the country's gold resources.

In 2020, the Ghanaian government proposed entering into a deal with Agyapa Royalties Limited under which the company, which was 51% owned by the Ghanaian government, would receive most of the royalties from various gold mines in Ghana. The Applicants alleged that the Ghanaian government had acted in a corrupt manner and valued the gold rights at far less than they could be worth. The Applicants further alleged that the deal would deprive Ghanaians of the benefits of their gold resources, contrary to Article 21(1) of the African Charter on Human and People's Rights (the "Charter"), which provides that "[a]ll peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people."

In an earlier decision, the Court had expunged Transparency International from the list of applicants on the grounds that it had not demonstrated its interest in the matter and was not from an ECOWAS Member State.

In the July 10th decision, the Court held that the two remaining Applicants had failed to submit adequate proof of their first claim, relating to the alleged misappropriation of resources. The Court also dismissed the

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remaining claims that Article 256(7) of Ghana's constitution was contrary to Article 21(1) of the Charter, and that certain politicians benefited from the terms of the deal.

ECtHR Decides Caster Semenya's Claim Regarding Hormone Treatment

Lisa Reinsberg, International Justice Resource Center

The European Court of Human Rights (ECtHR), on July 11, issued its judgment in the case of *Semenya v. Switzerland*, which concerns the Court of Arbitration for Sport (CAS) and Swiss Federal Court's handling of a South African athlete's legal challenge to an athletics governing body's requirement that she undergo hormone treatment in order to participate in international competitions. While the chamber's judgment is currently only available in French, the ECtHR has published a legal summary in English.

Caster Semenya, a middle-distance runner, is a three-time world champion. Following her first world championship win in 2009, Semenya was required to take a so-called sex-verification test, which indicated she had a relatively high natural testosterone level. The International Association of Athletics Federations (IAAF, now World Athletics) obligated her to undergo hormone treatment to decrease her testosterone level, in order to compete. While undergoing this treatment, Semenya continued to win at the global level. Following a 2016 decision by the Court of Arbitration for Sport (CAS) suspending the IAAF regulations on testosterone levels, based on the lack of evidence that higher testosterone gives athletes a significant advantage, Semenya stopped the hormone therapy.

In 2018, the IAAF published new regulations that again mandated hormone treatment; Semenya refused to comply and requested (compulsory) arbitration. The CAS denied her request, and the Federal Court of Switzerland rejected her appeal.

On the merits, the ECtHR focused on procedural shortcomings in examining whether the CAS and Federal Court decisions interfered with Semenya's right to respect for private life and personal identity (as a professional athlete) in a discriminatory manner. A difference in treatment on the basis of sex, the Court emphasized, requires very weighty justification. However, the ECtHR concluded that neither the CAS nor Federal Court had thoroughly examined the asserted justification for the hormone regulations. While Switzerland and World Athletics argued it was fair to treat Semenya as it did trans female athletes, the ECtHR noted its concern, essentially, with this reasoning and with the Federal Court's failure to analyze it. As such, the ECtHR held that the State had violated Semenya's right to non-discrimination, taken together with her right to respect for private life, as well as her right to an effective remedy. Its ruling does not find human rights violations in the World Athletics regulations themselves, but rather in the handling of Semenya's challenge to them.

Costa Rica Is Not Responsible for Violating Detained American's Rights, IACtHR Holds

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

In *Scot Cochran v. Costa Rica*, decided on July 12, the Inter-American Court of Human Rights (IACtHR) ruled that Costa Rica had not violated the rights of a U.S. citizen who had been incarcerated after having been convicted and sentenced to prison terms of a total 154 years for crimes related to drug trafficking, pornography and sexual acts involving minors. The applicant alleged violations of his personal liberty and of judicial guarantees, which the IACtHR did not find to have occurred.

Instead, the IACtHR held that the procedures utilized to convict and sentence the U.S. citizen, including the appeals procedure, was compatible with Costa Rica's international legal obligations. Notably, the applicant had been informed about his consular rights. The IACtHR also took note of the fact that Costa Rica had reformed its appeals system after earlier IACtHR deci-sions in the cases *Amrhein et al. v. Costa Rica* and *Herrera Ulloa v. Costa Rica*, in which problems with the appeals processes had been identified.

ICJ Delivers Judgment in Nicaragua v. Colombia Maritime Boundary Case

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

For decades, Nicaragua and Colombia have disputed their maritime boundary in the Caribbean Sea. After the

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International Court of Justice (ICJ) issued a judgment concerning sovereignty over islands in the disputed region in 2012, Nicaragua initiated a new case at the ICJ in 2013—*Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond* 200 *Nautical Miles from the Nicaraguan Coast* (*Nicaragua v. Colombia*). That case, which was decided on July 13, concerned the maritime boundary on the continental shelf, in particular at a distance of more than 200 nautical miles (nm) from the baselines of the coastal State from which the different maritime zones are measured. In interpreting Article 76 of the United Nations Convention on the Law of the Sea (UNCLOS), among the issues that the ICJ had to address were how the limits of the continental shelf beyond 200 nm are to be determined and whether the continental shelf beyond 200 nm from the baseline was permitted to extend to closer than 200 nm from the baselines of another State. The International Court of Justice rejected all of Nicaragua's requests and ruled against exceptions from continental shelf rules to the detriment of Colombia's claim on the basis of the vicinity of Nicaragua.

ICC Appeals Chamber Confirms Authorization to Resume Investigations in Philippines Situation

Philipp Kotlaba

On July 18, the Appeals Chamber of the International Criminal Court confirmed the Office of the Prosecutor's (OTP's) investigation into crimes allegedly committed in the Philippines in the context of president Rodrigo Duterte's notorious "war on drugs" campaign.

The OTP originally commenced its investigation following authorization from the Pre-Trial Chamber in 2021, but was required to suspend its work following the Philippines' invocation of Article 18(2) of the Rome Statute, which provides for deferrals in cases where, in keeping with the principle of complementarity, the State concerned conducts its own investigation. The OTP subsequently requested authorization to resume its investigation, leading to a PTC judgment in January 2023 which determined that the Philippines had failed to demonstrate the undertaking of investigations warranting a continued deferral.

In its judgment, a bare majority of the Appeals Chamber confirmed the PTC's decision. With respect to the Philippines' withdrawal from the Rome Statute purportedly precluding the ICC's exercise of jurisdiction, the Appeals Chamber refused to consider the PTC's decision as one on jurisdiction, deemed the Philippines' arguments improperly pled, and thus declined to entertain them. Turning to Article 18(2), the 3-judge majority held that the PTC correctly captured the "general parameters" of the standard to be applied in assessing the Philippines' domestic investigations: these must "sufficiently mirror" the scope of the Prosecutor's intended investigation (e.g., concern the same groups or categories of individuals). In contrast to such questions of fact, a State's "willingness" or "ability" to investigate did not constitute factors which the PTC was required to consider. Finally, the Appeals Chamber disagreed that the burden of proof with regard to the existence of an in-country investigation shifted to the OTP on account of the latter's responsibility for seizing a Pre-Trial Chamber with an Article 18(2) application, and for furnishing the PTC with information received from the challenging State.

Caribbean Court of Justice Reverses Barbados Court of Appeal's Denial of Protection Order in Domestic Violence Case

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

In an appeal from the Court of Appeal of Barbados, the Caribbean Court of Justice (CCJ) issued its decision on July 28 in the case of OO *v.* BK & *the Attorney General of Barbados*. The case involved the appellant's request for a protection order against the first respondent, with whom she previously had a relationship and shared a son, in light of the respondent's violence. The Barbados Magistrate denied the appellant's request on the basis that her relationship with the first respondent did not fall within any of the categories of relationship set forth in Barbados's Domestic Violence (Protection Orders) Act, namely that she was neither a "former spouse" of the respondent, nor was she currently in a relationship with him. The Barbados Court of Appeal affirmed the Magistrate's decision and the appellant appealed, seeking to broaden the categories of relationship listed in the Act, and the Attorney General of Barbados was added as a respondent.

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In granting judgment in favor of the appellant and reversing the Magistrate and Court of Appeals decisions, the CCJ examined the prevalence of domestic violence in Barbados and the Caribbean more generally, as well as the Domestic Violence Act's purpose in providing greater safety for victims and heavier accountability for perpetrators of domestic violence. The Court further recognized that legislation should be interpreted to align with its purpose as well as with fundamental human rights and the core constitutional values set forth in Commonwealth Caribbean constitutions. In utilizing these interpretation principles, the Court further determined that the term "former spouse" as set forth in the Act encompasses all former cohabitational relationships, without any time limits. Thus, the appellant's relationship was protected by the Act, and the Magistrate erred in failing to grant her protective order.

International Residual Mechanism for Criminal Tribunals (IRMCT) Rules on Kabuga's Appeal

Philipp Kotlaba

On August 7, the Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (IRMCT) quashed a Trial Chamber decision that, in reaction to defendant Félicien Kabuga's severe cognitive decline, had sought to institute an "alternative finding procedure" akin to a finding of fact hearing, albeit one that would have foregone the possibility of a criminal conviction while simultaneously dispensing with various due process protections.

Kabuga, who stood accused of genocide and inciting genocide in Rwanda, was indicted in 1998 but evaded arrest until 2020. He was subsequently diagnosed with a progressive form of dementia, leading the Trial Chamber to find him unfit to stand trial. Rather than ordering an indefinite stay of proceedings, however, and citing the need for justice, the Trial Chamber sought to create an alternative procedure that would determine Kabuga's complicity while dispensing with certain fair trial rights. Under this procedure, Kabuga's participation would not have been required, the Trial Chamber could reach a determination without a conviction, and Kabuga would lack any right of appeal against a potential finding of culpability.

The Appeals Chamber observed that the alternative finding procedure would violate the defendant's right to be tried in his own presence—an "indispensable cornerstone of justice"—while rendering other protective principles, such as *non bis in idem*, unavailable to him. The alternative finding procedure was irreconcilable with the International Criminal Tribunal for Rwanda ("ICTR")'s statute, which envisages fully-fledged criminal trials, and with the fundamental objectives and expectations of the ICTR at its establishment by the Security Council. Accordingly, the Appeals Chamber deemed the alternative procedure invalid, and directed the Trial Chamber to order a stay of proceedings while giving "priority consideration" to the issue of Kabuga's release. As a practical matter, it is uncertain whether the IRMCT will be able to identify a State willing to accept Kabuga on its territory: an uncomfortable reminder of the IRMCT's uneven track record in effectuating the release of eligible persons from its custody.

IACtHR Finds Colombia Responsible for Soldier's Disappearance

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

On August 8, the Inter-American Court of Human Rights (IACtHR) ruled in the case of the forced disappearance of a member of the regular armed forces of Colombia, Óscar Tabares Toro, in 1997. He disappeared during a military exercise, and the Colombian State did not conduct a sufficient investigation. Moreover, the next of kin of the disappeared were forced to move more than ten times and eventually left their home country altogether in order to avoid feared repercussions due to their quest for the truth.

The IACtHR found that Colombia had violated not only the rights of the disappeared person but also those of his closest family members. Among the rights violated were the human rights to life, to human treatment, to personal liberty, to juridical personality, the right to a fair trial, the right to judicial protection, and the right to privacy. The violations consisted both in the forced disappearance and in the failure of the Colombian State to investigate the disappearance and to inform the family about the circumstances of the disappearance.

Colombia has accepted its responsibility and the IACtHR has ordered the country, inter alia, to increase its investigative efforts and to make the case of Mr Tabares Toro and his family known through a documentary.

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EU General Court Dismisses Refugees' Damages Claim against Frontex

Lisa Reinsberg, International Justice Resource Center

On September 6, the General Court of the European Union announced it had dismissed a Syrian refugee family's claim seeking damages from the European Border and Coast Guard Agency (Frontex), which they argued contravened the principle of *non-refoulement* and violated their right to seek asylum, among other human rights. In the case of WS *and Others v. Frontex*, the family argued that Frontex failed to comply with EU norms and its own internal policies when, in October 2016, Frontex and the Greek government jointly transferred them from the Greek island of Milos to a temporary reception center in Turkey. The family submitted complaints against Frontex to its Fundamental Rights Officer - which transferred the complaint to Greek authorities - and to the European Court of Human Rights, before turning to the General Court.

The General Court reiterated that the EU can only incur non-contractual liability for the conduct of its institutions when that conduct is unlawful, actual damage is suffered, and there is a causal link between the alleged conduct and damage. In this instance, the Court focused on the causal link element, considering the family's allegation that, if Frontex had complied with its obligations to protect fundamental rights in joint operations, they would not have been unlawfully returned to Turkey and could have obtained international protection, meaning they would not have incurred the costs - nor incurred the emotional harms - associated with traveling to Greece, staying in Turkey, relocating to Iraq, and pursuing legal relief.

The General Court found that EU standards task Frontex merely with providing technical and operational support to Member States, not with the substance of return decisions, which is the domain of Member States alone. Accordingly, the Court concluded that there could be no causal link between Frontex's actions and the harm to the family, especially when some of that harm resulted from "the choice they made" to leave the Turkish reception center and then travel to Iraq to avoid return to Syria. With regard to their legal expenses, the General Court concluded that "it is their own decision" to seek legal advice, which was not required to pursue a complaint against Frontex. The family has a window of two months and ten days to appeal to the Court of Justice of the European Union.

CJEU Upholds Denial of Access to Information on Emotion Recognition Technology for Use at Borders

Lisa Reinsberg, International Justice Resource Center

On September 7, the Court of Justice of the European Union (CJEU) delivered its judgment in the case of *Breyer v. European Research Executive Agency* (REA), which concerns public access to documents on the "iBorderCtrl project" to test "emotion recognition" technologies, as described by Article 19. Patrick Breyer, a German activist and Member of European Parliament, sought information on the project from REA in 2018. While REA gave him full or partial access to two documents, it withheld other documents in order to protect the commercial interests of the compa-nies participating in the project. In December 2021, the EU General Court annulled REA's decision insofar as it failed to decide certain requests and denied access to informa-tion not covered by the commercial interests exception of Regulation 1049/2001. The Court dismissed the remainder of Breyer's claim.

The CJEU confirmed this holding and dismissed Breyer's appeal, in which he had argued an overriding public interest justified disclosure of the information sought, despite any harm to commercial interests. Breyer alleged that the public has an interest in being able to: debate the use of public funding for a project like iBorderCtrl, examine the science and reliability of a technology intended to automate detection of lies based on individuals' micro-expressions, understand and address the potential impacts on fundamental rights, and to have a scientific debate over the research results. He argued that these interests were not satisfied by publicly-available information on the project or the grant agreement's requirement that participating companies publish their findings.

While the CJEU found some flaws in the General Court's findings of law, it agreed with its conclusion that there was no overriding public interest justifying disclosure of the research, despite the commercial interests involved, in this case. Specifically, the CJEU held that the public interest was satisfied by the requirement that iBorderCtrl participants disseminate the results of their research. ■

Opportunities

Conferences, Webinars & Programs

Launch of LAW Not War: A New Initiative to Build Acceptance of International Court of Justice Jurisdiction: September 26

The World Federalist Movement-Institute for Global Policy, Citizens for Global Solutions (CGS), and the World Future Council are pleased to announce a new initiative, Legal Alternatives to War: Towards Universal Jurisdiction of the International Court of Justice (LAW not War). LAW not War is an effort of civil society and legal professionals to promote international law and judicial institutions as fora for the pacific resolution of disputes, primarily by championing the universality and effectiveness of the International Court of Justice (ICJ). This complements State-led efforts, including the release by a group of like-minded States of a Declaration promoting the ICJ's jurisdiction, which is now endorsed by 33 countries (including a few that have yet to formally accept such jurisdiction) and a Handbook on ICJ jurisdiction.

LAW *not* War will work to enhance ICJ jurisdiction through education and advocacy by:

- Urging States that have not yet accepted the compulsory jurisdiction of the ICJ to do so, with the aspiration to achieve universal acceptance of ICJ jurisdiction by 2045, the centennial anniversary of the United Nations;
- Promoting greater use of ICJ Advisory Opinions by UN bodies;
- Appealing to States to make more frequent use of jurisdiction by mutual agreement;
- Encouraging more frequent use of ICJ in international treaties; and
- Calling upon States to adopt constitutional amendments or legislative measures to affirm the UN Charter prohibition of war and the obligation to resolve international disputes peacefully including through the ICJ.

The campaign will formally launch in October 2023. CGS will host a "preview" soft launch discussion with legal professionals and CSOs in the Washington, DC, area on September 26. To join the event or for more information, please contact CGS Executive Director Rebecca Shoot at rshoot@globalsolutions.org.

International Law Weekend: October 19-21

The American Branch of the International Law Association will host International Law Weekend in New York City on October 19 to 21. This year's theme will be "Beyond International Law." The schedule includes a session on *Assessing the Legal Personality & Obligations of International Courts and Tribunals*, among other panels of relevance to the interest group.

Conference on International Dispute Settlement - Resort to International Advisory Proceedings: October 20

The Lauterpacht Centre for International Law at the University of Cambridge, in partnership with other academic centers, will host a full-day conference on October 20 on the topic of "Resort to International Advisory Proceedings." Those interested may register to attend in-person or virtually. The agenda and other details are available on the conference webpage.

2023 ILA-ASIL Asia Pacific Research Forum: December 3-4

The Research Center for International Legal Studies of National Chengchi University and the Chinese (Taiwan) Society of International Law will hold the 2023 ILA-ASIL Asia-Pacific Research Forum at Howard Civil Service International House in Taipei, Taiwan, ROC on December 3 to 4. The theme of the Research Forum is "Indo-Pacific Strategies and International Law." Registration information and other details can be found on the research forum's website.

Calls for Papers

Common Interests and Common Spaces: International Approaches to Dispute Settlement

The Grotius Centre for International Legal Studies (Universiteit Leiden) welcomes abstracts for a workshop entitled, Common Interests and Common Spaces: Institutional Approaches to Dispute Settlement, to be held December 13 in the Hague (Netherlands). Abstracts are welcome until September 28, and further instructions are available in the call for papers.

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Opportunities —*continued from page* 10

International Law and Maldives: Navigating Geopolitics, Trade, and Sovereignty

The Faculty of Shariah and Law (Villa College, Maldives) will host a symposium, entitled, International Law and Maldives: Navigating Geopolitics, Trade and Sovereignty, on December 20-21 in Malé, Maldives. Abstracts are welcome until September 30 and further information is available 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.

The Borderlands of Criminal Law Conference

The *Transnational Criminal Law Review* and Faculty of Law at the University of Windsor will host The Borderlands of Criminal Law Conference on June 20-21, 2024 in Windsor, Canada. Applications to participate are due by October 9. Application requirements and other details are available in the call for papers.

5th Annual International & Comparative Law Insolvency Symposium

Royal Holloway, University of London will be hosting the 5th Annual International & Comparative Law Insolvency Symposium on their Egham campus (close to London) on April 25-27, 2024. Abstracts should be submitted no later than November 15, 2023, and further details are available in the call for papers.

Job Postings & Other Opportunities

Attorney, Inter-American Court of Human Rights

The IACtHR is accepting applications for an attorney to work in the Legal Department in the section focused on Monitoring Compliance with Judgments, at the Court's seat in Costa Rica. The contract is for 24 months. Applications are due September 15 and additional details are available in the posting (Spanish only).

Associate Legal Officer/Courtroom Officer (P2), the International Criminal Court

The ICC invites applications for an Associate Legal Officer/Courtroom Officer (P2) to work within the Court Management Section in the Division of Judicial Services within the Registry. Applications must be submitted by September 17, and further information is available in the posting.

Associate Judicial Information Management Officer (P2), International Criminal Court

The ICC is accepting applications for an Associate Judicial Information Management Officer to work within the Court Management Section, in the Division of Judicial Services within the Registry. Applications are due September 17, and additional information is available in the posting.

Head of International Accountability Platform for Belarus, DIGNITY

DIGNITY is seeking to fill a vacant position as head of its International Accountability Platform for Belarus (IAPB). The IAPB is a coalition of independent non-government organizations that have joined forces to collect, consolidate, verify, and preserve evidence of gross human rights violations constituting crimes under international law allegedly committed by Belarusian authorities and others in the run-up to the 2020 presidential election and its aftermath, with a view to supporting accountability bodies. The position will be based in DIGNITY's Copenhagen headquarters. Applications must be submitted no later than September 20, and additional information is available in the posting.

Visiting Professionals, Inter-American Court of Human Rights

The IACtHR invites applications for professional visits during 2024. Visits may occur during three periods: January to April, May to August, or September to December. During the professional visit, qualified professionals join the Court's staff on a full-time basis. The Court does not provide remuneration. Applications for 2024 are due September 21, and additional information can be found on the Court's webpage.

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Opportunities —*continued from page* 11

Law Clerk, Human Rights Watch

The International Justice Program of Human Rights Watch (HRW) is seeking a Law Clerk to support a range of staff projects across the program and provide research and administrative assistance.This is a seven-month, fixed-term position and will preferably be based in Brussels, New York, or Washington D.C. This position reports to the Director of the International Justice Program. The application deadline is September 27, and further information is available in the posting.

Witness Protection Officer (P3), Independent Investigative Mechanism for Myanmar

The UN's Independent Investigative Mechanism is seeking a Witness Protection and Support Office (P3) to be based in Geneva. Applications must be submitted by September 29, and additional information is available in the posting.

President, Global Justice Center

The Global Justice Center (GJC) is seeking a new President to help the organization into its next chapter. The GJC is a not-for-profit human rights legal organization based in New York City with an activist approach to using international law as a catalyst for radical change. Further information and the link to express interest can be obtained here. ■

Member News

Ryan R. Migeed, J.D. George Washington University '22, was selected this year as one of two American stagiaires for the Court of Justice of the European Union through the U.S. State Department's Dean Acheson Legal Stage Program. Ryan served in the Cabinet of Judge Ulf Öberg on the General Court of the European Court of Justice from March to May.

Professor **Surya P. Subedi**, OBE, KC, has been elected an Honorary Fellow of Exeter College, Oxford, by the College's Governing Body. It is the highest honour that Exeter College can bestow and is reserved for individuals who are both distinguished in their field and who have also contributed to society more generally. Professor Subedi obtained his DPhil in Law at Oxford in 1993 and was awarded the DCL by the University of Oxford in 2019. He was made an OBE in 2004 and appointed a Queen's Counsel (QC) (Hon) in 2017. He is currently Professor of International Law at the University of Leeds and a practicing barrister in London.

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!

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.