

# International Courts & Tribunals Interest Group Newsletter

## Introductory Note

We are very happy to publish the June 2022 edition of the ICTIG Newsletter. Since the last edition in March, several developments have taken place in international dispute settlement, including a newly-introduced case between Germany and Italy at the International Court of Justice concerning jurisdictional immunity. The armed conflict between Ukraine and the Russian Federation continues to occupy the spotlight in the news.

Recently, the interest group has co-sponsored an event entitled “Universal Jurisdiction: Controversies and Opportunities,” organized by the Society’s Human Rights Interest Group. We have more events in preparation for the upcoming season, with more details to come in due course.

There has been a change in the leadership of the interest group. At the 2022 Annual Meeting, David Bigge concluded his term as Co-chair. We would like to thank him for having co-lead this group over three years. We welcome Massimo Lando as the new Co-chair alongside Freya Baetens, who is still serving the rest of her term.

We take this opportunity to advertise two vacancies on the interest group’s advisory board. We are now soliciting nominations, including self-nominations, by interest group members to join the advisory board. Advisory Board members will contribute to the running of the interest group, especially by organizing our events. Nominations, including a short statement of interest, are to be sent to the two Co-chairs, Freya Baetens ([freya.baetens@jus.uio.no](mailto:freya.baetens@jus.uio.no)) and Massimo Lando ([mflando@cityu.edu.hk](mailto:mflando@cityu.edu.hk)), by 6:00pm EDT on July 15, 2022.

-Freya Baetens & Massimo Lando, Co-chairs

## Developments at International Courts & Tribunals

### Member States Approve ICSID Rule Amendments

On March 21, ICSID announced Member States had approved a “comprehensive set of amendments” to its Regulations and Rules on the resolution of disputes between foreign investors and host States, including its rules for arbitration and conciliation, along with entirely new rules for mediation and fact-finding. The five-year review process led to significant changes in the interests of efficiency, accessibility, and transparency. For example, the amendments include mandatory timeframes for rendering orders and awards, require electronic filing of documents

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### International Courts & Tribunals Interest Group

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#### EDITORS

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## Developments at International Courts & Tribunals —continued from page 1

and submissions, encourage publication of awards and decisions by assuming consent in the absence of a party's written objection, make ICSID Additional Facility arbitration available upon consent of the parties where neither party is an ICSID Member State or national of a Member State, and require parties to disclose third-party funding. The changes will take effect on July 1, 2022.

### European Court of Human Rights Clarifies Russia Will No Longer Be a State Party as of September 16

On March 22, the European Court of Human Rights (ECtHR) resolved that Russia will cease to be a Party to the European Convention on Human Rights (ECHR) on September 16, 2022, but that the Court will retain competence to decide applications against Russia regarding acts that occur before that date. Accordingly, the Court has resumed its examination of applications against Russia. The Council of Europe (COE) Committee of Ministers confirmed the ECtHR's understanding in a resolution of its own.

On March 15, the COE had expelled Russia in response to its invasion of Ukraine, effective that day. At the time, there was debate over the precise implications for the jurisdiction of the ECtHR, based on different readings of the interplay between Article 8 of the Statute of the COE and Article 58 of the ECHR.

On June 7, the Russian State Duma reportedly adopted two bills concerning the ECtHR's jurisdiction over Russia. They assert that Russia will not comply with any judgments issued after March 15 and that, at the end of 2022, Russia will cease paying any monetary damages ordered by the Court. The bills will become law if signed by President Putin.

### Madagascar Accedes to Protocol Establishing African Court on Human and Peoples' Rights

On March 28, the African Court on Human and Peoples' Rights announced that Madagascar had become a party to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. With the addition of

Madagascar, 33 States are now party to the Protocol, accepting the Court's jurisdiction over complaints submitted by States, the African Commission on Human and Peoples' Rights, and African intergovernmental organs. Madagascar has not made the declaration, under Article 34(6) of the Protocol, to allow individuals and non-governmental organizations direct access to the Court. Eight States currently allow individual and NGO complaints, following the withdrawal of the Article 34(6) declaration by four States. In a recent decision, the Executive Council of the African Union invited more States to join the Protocol and declare acceptance of individual and NGO complaints, while also calling on the Court to "have a deeper appreciation of reasons causing Member States to withdraw their declaration...and [to] assure Member States that such reasons are no longer there."

### Slovenia and ICC Enter Agreement on Detention

On April 1, the Republic of Slovenia and the International Criminal Court entered into an agreement on the enforcement of ICC sentences, setting out the terms under which Slovenia may manage the incarceration, in its own prison facilities, of individuals convicted and sentenced by the ICC. In executing this agreement, Slovenia joins eleven other States Parties who have similar agreements with the ICC, including the U.K., Argentina, Mali, and Sweden, among others.

### Trial against Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb") Begins at ICC

The trial in the case of *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* ("Ali Kushayb") opened on April 5 before Trial Chamber I of the ICC. The Prosecutor has charged Mr. Abd-Al-Rahman with 31 counts of war crimes and crimes against humanity allegedly committed in Darfur, Sudan between August 2003 and April 2004. The charges relate to Mr. Abd-Al-Rahman's role as a senior leader of the Militia/Janjaweed in Darfur. The trial currently remains ongoing.

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

### East African Court of Justice Signs MoU with UNESCO on Access to Information

On April 12, the East African Court of Justice announced it had signed a memorandum of understanding with the United Nations Educational, Scientific and Cultural Organization (UNESCO) regarding promotion of freedom of expression, access to information, and rule of law in the East African Community (EAC). Per the EACJ's [Twitter](#), the parties signed the memorandum in December 2021. The agreement appears to be intended to promote values related to freedom of expression, as well as the EACJ's jurisprudence, among the judiciaries of the EAC Member States. UNESCO has entered into similar agreements with the other regional and continental courts of Africa, as well. The text of the MoU is not available on the EACJ website.

### ICC Joins Investigation Team on Ukraine

On April 25, ICC Prosecutor Karim Khan announced his office had joined Lithuania, Poland, and Ukraine as a member of a joint investigation team on alleged international crimes committed in Ukraine. On May 17, the Office of the Prosecutor later confirmed the deployment to Ukraine of its largest-ever team of investigators, forensic experts, and other personnel to work with various national teams of investigators in conducting and coordinating ongoing evidence collection.

### ICC Reports on Progress & Sets Goals in Libya

The International Criminal Court has released two new reports on its work. The [2021 Report of the Court on Key Performance Indicators](#), released on May 9, reviews the ICC's progress in pending investigations and cases, as well as toward specific goals. The Prosecutor's twenty-third report to the UN Security Council on the situation in [Libya](#), dated April 21, reviews the history and recent developments of the ICC's investigation and lays out "a renewed investigative and prosecutorial strategy" with key goals to secure and measure the Office of the Prosecutor's progress. The four "landmarks" identified as priority achievements in the next three to 24 months relate to digital evidence storage, operationalization of artificial intelligence and machine learning tools for processing of evidence, strengthened field presence, and a new tranche of arrest warrant applications.

### ICJ Publishes its 2019-2020 Yearbook

The ICJ published its annual [Yearbook](#) which covers the period from August 1, 2019 to July 31, 2020. The [Yearbook](#) includes information in both English and French regarding the Court's judicial activities, organization and jurisdiction, and procedure. This is the 74th in the ICJ's [Yearbook](#) series.

### Two Judges to be Elected to the African Human Rights Court

The African Court of Human and Peoples' Rights has, apparently for the first time, publicly announced the upcoming expiration of two judges' terms and shared the African Union Commission's call for States parties to nominate candidates. The judges will be elected during the 41st Ordinary Session of the Executive Council of the African Union, to be held on as-yet-unspecified dates in June or July 2022. The Court has typically announced the election or swearing-in of new judges after the fact. The process for judges' nomination and selection is managed by the Commission and Executive Council of the African Union, which often publishes little or no information publicly in advance of elections.

### Tanzania to Begin Construction on AfCHPR Headquarters

The African Court on Human and Peoples' Rights announced on June 3 that the Parliament of Tanzania had approved the budget for the construction of the Court's permanent premises in Arusha. Since 2006, the Court has been operating from temporary headquarters and is currently housed in the Tanzania National Parks offices. The new headquarters will be located near the Tanzania branch of the UN International Residual Mechanism for Criminal Tribunals on a 25-hectare parcel in the Lakilaki area on the outskirts of Arusha.

### ICJ Reduces COVID Restrictions

On June 3, the International Court of Justice indicated it had "taken steps to ease the measures it had previously adopted in response to the COVID-19 pandemic," including resuming in-person hearings and meetings. However, hearings are still closed to the public for the time being. ■

## New Publications

### Articles, Essays, Book Chapters & Book Reviews

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

- James Borton, *Dispatches from the South China Sea: Navigating to Common Ground* (Universal Publishers 2022).
- Sara L. Ochs, *Fake News & International Criminal Law*, 66 *St. Louis University Law Journal* 99 (2022).
- Clara Reichenbach, *The Corruption Defence and the Jurisdictional Consequences of Corruption Allegations in International Law and Investment Arbitration*, in *Yearbook of International Investment Law and Policy* 2020 (Lisa E. Sachs, Lise J. Johnson & Jesse Coleman eds., 2022).
- Anne Trebilcock, *Approaches to Discrimination Claims: A Comparison of the Administrative Tribunals of the Asian Development Bank and the Inter-American Development Bank Group*, *Asian Journal of International Law* (published online 16 May 2022).
- Ka Lok Yip, *The Use of Force against Individuals in War under International Law: A Social Ontological Approach* (Oxford University Press 2022).

## Notable Judgments & Decisions

### IACtHR Holds Peru Responsible for Underpayment of 4,090 Maritime Workers

**Lucía Solano**

In the *judgment* (Spanish only) adopted on February 1 in the *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru*, the Inter-American Court found Peru internationally responsible for the violation of the rights to judicial guarantees, judicial protection, and labor and private property, to the detriment of 4,090 maritime and port workers, due to the lack of compliance with a judgment of the Peruvian Supreme Court issued on February 12, 1992, which established the manner of calculating the additional salary increase for such employees. The Court considered that the State is responsible for the failure to comply with the guarantee of reasonable time in the execution of the Court's judgment.

In turn, the Court warned that when dealing with elderly persons, such as the victims in this case, a reinforced criterion of celerity is required in all judicial and administrative processes. On the other hand, the Court found that the delay and/or lack of execution of the Supreme Court's judgment had a direct impact on the collection of duly accrued and uncollected salaries, which affected the victims' right to work and had an effect on their assets. Due to these violations, the Court established several measures of reparation, including the immediate and progressive payment of the outstanding reimbursements.

### IACtHR Condemns Firing of Religious Studies Teacher on the Basis of Her Sexual Orientation

**Lucía Solano**

In its February 4 *judgment* (Spanish only) in the case of *Pavez Pavez v. Chile*, the Inter-American Court of Human Rights held Chile responsible for violating the rights of Sandra Pavez Pavez in connection with her removal as a Catholic religion teacher in a public school, after her certificate of suitability was revoked by the religious authorities on the basis of her sexual orientation. Specifically, the Court declared the State's responsibility for the violations of Pavez's rights to equality and non-discrimination, personal liberty, privacy and work, recognized in the American Convention on Human Rights, to her detriment.

The Court recognized that Chilean religious authorities have broad autonomy in granting a certificate of suitability to teach religion classes; however, it indicated that these powers, which derive from the right to religious freedom, must be adapted to the other rights and obligations in force in terms of equality and non-discrimination. The Court also determined that the right to work was compromised. The Court concluded that the victim lacked suitable and effective remedies to challenge the effects of the decision to revoke her certificate of suitability. For these reasons, the rights to judicial guarantees and to judicial protection were violated. Because of these violations, the Court ordered the State to implement various measures of reparation.

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## Notable Judgments & Decisions —continued from page 4

### Caribbean Court of Justice Orders Guyana to Release U.S. Citizen Charged with Murder and Revises Criminal Procedure Code

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

In a March 15th [judgment](#), the Caribbean Court of Justice (“CCJ”) allowed the appeal in the Guyanese case, *Marcus Bisram v. The Director of Public Prosecutions*, in which it ordered that Bisram, who had been accused of murder by the Guyanese Government, be released from prison. At the Preliminary Inquiry into Bisram’s murder charge, the only evidence presented against him was by a witness who changed his testimony under cross-examination. Based on this lack of evidence, the magistrate discharged Bisram, but the Guyanese Director of Public Prosecutions (DPP), pursuant to authority granted by Section 72 of Guyana’s Criminal Law (Procedure) Act, directed the magistrate to reopen the Preliminary Investigation and commit Bisram to trial.

On appeal from Guyana’s Court of Appeal, the CCJ first agreed with Bisram that the DPP failed to comply with the procedural requirements imposed by Section 72, but found that the DPP’s failure to do so did not prejudice Bisram’s case. The CCJ then went on to deem Section 72 unconstitutional, finding that it contradicts Article 122A of the Guyana Constitution, which ensures the judicial independence of Guyanese courts, as Section 72 renders magistrates’ decisions subject to review and direction by the DPP. The Court further determined that Section 72 violated Guyana’s separation of powers doctrine by undermining the independence and decisional authority of magistrates.

Rather than fully striking down Section 72, the CCJ modified the Section to remove all provisions permitting DPP to direct magistrates’ decisions, until the Guyana National Assembly makes “suitable provisions.” Moreover, although the CCJ’s judgment ordered Bisram’s release, the CCJ clarified that, should Guyana’s prosecutorial authorities obtain fresh evidence tying Bisram to the alleged murder, they may arrest and charge him again.

### ECOWAS Court Orders Revision of Nigerian Cybercrime Law

**Lisa Reinsberg, International Justice Resource Center**

On March 25, the Court of Justice of the Economic Community of West African States (ECOWAS) adopted its [judgment](#) in the case of *SERAP v. Nigeria* concerning Section 24 of Nigeria’s Cybercrime Act of 2015. The complaint, filed by the non-governmental organization Socio-Economic and Accountability Project (SERAP), alleged that Section 24 violated the right to freedom of expression, including the right to freedom of information, of human rights defenders, journalists, and others in its vague wording and its use to intimidate and arbitrarily detain individuals critical of the government. Section 24 of the Cybercrime Act punishes, by fine or imprisonment, *inter alia*, knowingly or intentionally using a computer system to: send a “grossly offensive” message, send a false message for the purpose of annoyance or insult, or bully or threaten another person.

While noting that the Act had been adopted following domestic procedure, the Court determined that its terms are vague and arbitrary because the Act “does not define the parameters or elements of the crime that it typifies.” Accordingly, the Court concluded that the Act “cannot pass the test of legality” and, therefore, contravenes Article 9 of the African Charter on Human and Peoples’ Rights and Article 19 of the International Covenant on Civil and Political Rights. It ordered Nigeria to amend Section 24 in accordance with its obligations.

The Court then turned to a list of individuals allegedly arrested and prosecuted under the Act between 2015 and 2018. However, the Court found insufficient support for SERAP’s allegations that these individuals had been unfairly prosecuted under the law, given its reliance on online newspaper clippings which “should have been corroborated with, for instance, the oral testimony or witness statements of the victims.” Accordingly, the Court dismissed the claim that the Act violated specific individuals’ rights.

The judgment has not yet been published on the Court’s website, but is available via the [African Human Rights Case Law Analyser](#).

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### ECtHR Holds Uploading of Prisoners' Correspondence to Judiciary Server Breached Privacy Rights

**Philipp Kotlaba**

On March 29, 2022, the ECtHR released its [judgment](#) (French only) in the matter of *Nuh Uzun and Others v. Turkey*, a case which presented the question of whether Turkish prison authorities' uploading of prisoners' incoming and outgoing correspondence to a national database was compatible with Article 8 of the Convention, concerning the right to respect for private and family life.

The key legal question in the challenge—brought by fourteen Turkish nationals arrested on terrorism charges in connection with an attempted military coup in 2016—hinged on whether the practice of uploading prisoners' correspondence had been established “in accordance with law.” The ECtHR had little difficulty in concluding that the practice of uploading and scanning prisoners' correspondence constituted an interference with the applicants' rights under Article 8. In determining whether such interference had been established in accordance with law, the Court considered that the instructions establishing the practice, circulated by the Ministry of Justice, were internal, unpublished documents, accessible neither to the applicants nor to the public. Because they were not issued under any rule-making powers, the instructions lacked the force of law. Under the Court's case-law, the measures were therefore incapable of affording the legal certainty necessary to prevent arbitrary interference by public authorities with the applicants' rights under Article 8 of the Convention.

Although the ECtHR sustained the applicants' Article 8 claims, the Court rejected a separate claim invoking Article 6 (right to a fair trial), in which a subset of applicants challenged the non-production, in the context of their domestic proceedings, of a Turkish prosecutor's opinion that deemed the correspondence-scanning practice lawful. In the Court's view, the non-production of the opinion did not create a significant legal disadvantage to the applicants, and it thus ruled the Article 6 claim inadmissible.

### ECtHR Expands Interim Measures Regarding Russian Invasion of Ukraine

**Philipp Kotlaba**

On April 1, 2022, the ECtHR indicated additional interim measures in relation to Russian military action in Ukraine. Earlier in March, the Court directed the Russian government to, *inter alia*, refrain from military attacks against civilians and civilian objects. It had also, in response to further requests for interim measures from private citizens in Ukraine, directed Russia to ensure unimpeded access of the civilian population to safe evacuation routes, healthcare, food and other essential supplies and ensure rapid and unconstrained passage of humanitarian aid and movement of humanitarian workers.

The present (third) indication of interim measures followed from an additional request by Ukraine submitted on March 16. This request addressed the use of prohibited, nuclear, chemical or biological weapons; the use of armed force anticipated to have a disproportionate impact on civilians; the undermining of the safety and security of nuclear facilities within Ukraine; and the assassination or abduction of the civilian leadership of Ukraine or other Ukrainian citizens (such as mayors of Russian-occupied villages and cities). Russia did not comment on Ukraine's new request before the Court.

In its decision, the ECtHR reiterated its earlier interim measures, clarified that they must be understood to apply to any and all attacks against civilians, and reminded Russia of its obligations, under Articles 2, 3 and 8 of the Convention, to allow civilians access to safe evacuation routes. In response to Ukraine's additional request, the Court also newly indicated that such evacuation routes should allow civilians to seek refuge in safer regions of Ukraine.

### CJEU Holds Non-EU Airlines Must Pay Compensation for Delayed Flights When Operating on Behalf of EU Airline

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

On April 4, the Court of Justice of the European Union issued its [judgment](#) on a request for a preliminary ruling

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concerning the payment of compensation for a delayed connecting flight in a non-EU Member State. The case in which the judgment was issued involved applicants who made a single reservation with Lufthansa through a travel agency for a flight from Brussels, Belgium to San Jose, California with a stopover in Newark, New Jersey. United Airlines, a U.S. airline, operated the entirety of the flight. The applicants arrived in San Jose 223 minutes after their scheduled arrival time due to a delay affecting the second leg of the flight (Newark to San Jose). Applicants lodged a claim against Happy Flights BVBA for compensation under Regulation No 261/2004 (“the Regulation”), which establishes common rules on compensation and assistance to airline passengers in the event of delayed or canceled flights. Happy Flights then tendered the claim to United Airlines, who refused to pay, arguing that the Regulation should not apply when a delay arises from the second leg of a flight originating from a Member State, when that second leg is operated entirely in a non-Member State.

The Court of Justice rejected United Airlines’ argument, finding that an international, connecting flight subject to a single reservation constitutes a whole flight for purposes of the Regulation, and said Regulation applies to the entirety of the whole flight departing from an airport located in a Member State, regardless of whether that flight makes a stopover in the territory of a non-Member State. The Court thus concluded that the second leg of Applicant’s flight (Newark to San Jose) fell within the scope of the Regulation. The Court further recognized that despite having no direct contractual relationship with the Applicants, United Airlines constituted the “operating air carrier” with compensation duties under the Regulation, as it operated the flight at issue on behalf of Lufthansa, the contracting carrier.

Moreover, the Court recognized that the Regulation’s applicability to connecting flights operated entirely within non-Member State is valid under customary international law and does not undermine a non-Member State’s “complete and exclusive sovereignty over its airspace,” as such connecting flights “retain a close connection with the territory of the European Union” by originating in EU territory.

## EACJ Finds Burundi’s Land Expropriation Violated Good Governance Principle

**Lisa Reinsberg, International Justice Resource Center**

In a judgment adopted on April 7 in the case of *Rugo Farm Company v. Attorney General of the Republic of Burundi*, the East African Court of Justice (First Instance Division) held that Burundi violated its rule-of-law obligations when it repossessed the company’s land without waiting for the Constitutional Court’s determination regarding the constitutionality of the seizure. The colonial government granted the right to cultivate the land at issue to the Ruzizi Company in 1928, with a caveat that it could not dispose of the land. In 1993, Ruzizi sold the land to the Rugo Farm Company. In 2012, the governmental company in charge of cotton cultivation (COGERCO) sued Rugo Farm Company for trespass on the land, which it said it owned, and won. Rugo Farm appealed to the Special Court, and then to the Constitutional Court. The Special Court affirmed the judgment without waiting for the Constitutional Court’s decision, and the government seized the land. Rugo Farm submitted its complaint to the East African Court of Justice, alleging violations of Articles 6(d) (good governance principle) and 7(2) (obligation of good governance) of the Treaty for the Establishment of the East African Community.

In response to the State’s fourth instance objection, the Court held it had jurisdiction to review the legality of a decision by the Burundi courts. With regard to the legality of the sale to Rugo Farm, the EACJ found no evidence that Ruzizi Company lacked a right to sell and, therefore, held that the sale was legal. The national Constitution requires that the lower courts postpone their decisions pending Constitutional Court review when a matter is appealed. Consequently, the Court concluded that the Special Court violated the Constitution and therefore Burundi’s obligations of good governance under the EAC Treaty. The Court declined the applicant’s request for damages because the amount sought was not substantiated, but urged the State to “reconsider the matter” and to compensate the applicant according to national law and international best practice if it decided to keep the land.

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### IACtHR Orders Precautionary Measures to Prevent Release of Alberto Fujimori

**Lucía Solano**

The Court, in its resolution (Spanish only) dated April 7, 2022, ordered Peru to refrain from implementing the presidential pardon granted on humanitarian grounds to former President Alberto Fujimori, which the Constitutional Court of Peru reinstated on March 17. The order came in response to a request for provisional measures and monitoring of compliance in connection with the Court's judgments in *Barrios Altos v. Peru* (2001) and *La Cantuta v. Peru* (2006), both concerning massacres committed during the Fujimori era. In those cases, the IACtHR declared Peru's amnesty laws incompatible with the American Convention on Human Rights and ordered Peru to investigate, prosecute, and punish those responsible for the killings. In 2009, Peruvian courts convicted Fujimori and sentenced him to 25 years imprisonment based on his command responsibility for the Barrios Altos and La Cantuta massacres. After Fujimori received a presidential pardon in 2017, Peruvian courts implemented the IACtHR's guidance to nullify the pardon. Fujimori sought *habeas corpus* review, which led to the Constitutional Court's favorable March ruling.

While the IACtHR declined to grant provisional measures, it did analyze the Constitutional Court's decision as a matter of compliance with its prior judgments. The IACtHR emphasized its understanding that the State's obligation to investigate, prosecute, and punish those responsible for extrajudicial killings includes obligations to ensure that prison sentences are actually carried out and that any discretionary pardon does not violate the principles of proportional punishment and access to justice for victims and their family members. The IACtHR insisted that executive pardons must be subject to judicial review, in which the court weighs competing interests, evaluates the health situation and conditions, and considers alternatives to unqualified release. In view of its conclusion that the Constitutional Court failed to engage in an appropriate review, the IACtHR ordered Peru to refrain from implementing the decision.

### ICJ Finds Colombia Violated Nicaragua's Sovereign Rights and Jurisdiction

**Massimo Lando, Assistant Professor, City University of Hong Kong**

On April 21, the International Court of Justice handed down its judgment in one of the pending *Nicaragua v. Colombia* cases. Nicaragua had contended that Colombia was internationally responsible for breaching Nicaragua's sovereign rights in the maritime spaces that the Court had found to appertain to it in the 2012 delimitation judgment in *Territorial and Maritime Dispute (Nicaragua v. Colombia)*. Colombia had contested the Court's jurisdiction *ratione temporis* because some of the incidents to which Nicaragua had referred in its submissions had taken place after Colombia's denunciation of the Pact of Bogotá took effect on November 27, 2013, the day after Nicaragua instituted proceedings. The Court dismissed Colombia's objection, finding that, once a dispute is submitted to the Court, claims which arise out of the dispute as submitted fall within the Court's jurisdiction, irrespective of when the underlying facts have taken place.

On the merits, the Court found that Colombia had interfered with fishing and marine scientific research by Nicaraguan vessels in Nicaragua's Exclusive Economic Zone, thus violating Nicaragua's sovereign rights in international law. Accordingly, the Court ordered Colombia to cease its wrongful acts. The Court also found that Colombia's "integral contiguous zone" created in 2013 lacked basis in international law. For its part, Colombia had counterclaimed that Nicaragua's straight baselines were inconsistent with customary international law and that Nicaragua had breached the traditional fishing rights of the inhabitants of the San Andrés Archipelago. The Court agreed with Colombia on the former counterclaim, but held that Colombia had failed to provide sufficient evidence that a customary fishing right existed that Nicaragua could have breached.

The Court was quite divided, with a significant number of judges dissenting, both on jurisdiction (e.g., Judges Abraham, Bennouna, Yusuf and Nolte) and on the merits (e.g., Vice-President Gevorgian).

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### ECtHR Advisory Opinion: Torture Charges Subject to National Statute of Limitations

#### Philipp Kotlaba

On April 26, 2022, the Grand Chamber of the European Court of Human Rights issued an [advisory opinion](#) in response to a request made by the Armenian Court of Cassation under Protocol No. 16 of the Convention. The question presented was whether Article 7 (no punishment without law) would prohibit Armenia's non-application of its statute of limitations in relation to a prosecution of Armenian police officers accused of torture.

In a preceding companion case, *Virabyan v. Armenia*, the ECtHR had found procedural and substantive violations by Armenia of Article 3 (prohibition on torture) in relation to its failure to prosecute police officers implicated in the applicant's ill-treatment. Subsequent to that decision, Armenia had charged the officers, but lower courts found that a statute of limitations barred further proceedings. In its advisory opinion, the ECtHR, having regard to the peremptory character of the prohibition on torture, first noted that the application of a statute of limitations sat "uneasily with its case-law concerning torture or other ill-treatment." Nevertheless, it unanimously held that it would be unacceptable for national authorities to compensate for the failure to discharge their positive obligations under Article 3 at the expense of the guarantees of legal certainty and foreseeability in Article 7. The court concluded that, in principle, Article 7 of the Convention would preclude the revival of a prosecution in respect to an offense after the statute of limitations had already run. The Court specified that it is the role of national courts to determine whether the State's international legal obligations create a sufficiently clear and foreseeable legal basis, in the national context, to conclude that the statute of limitations would not apply to torture going forward.

### CJEU Authorizes Consumer Protection Groups to Bring Data Protection Claims

#### Lisa Reinsberg, International Justice Resource Center

On April 28, the Court of Justice of the European Union issued its [judgment](#) in the *Meta Platforms Ireland* case. Meta Platforms Ireland is the controller of the personal data of Facebook users in the European Union. The Federal Union Consumer Organisations and Associations,

a consumer protection association in Germany, successfully sought an injunction against Meta, accusing it of violating German law by making available to its users free games provided by third parties whose terms allegedly fail to comply with valid consent requirements for use and publication of users' data.

In considering Meta's request for revision of the judgment denying its appeal, the Bundesgerichtshof (Federal Court of Justice) sought a preliminary ruling from the Court of Justice as to whether associations like the Federal Union have standing to bring civil proceedings concerning infringements of the General Data Protection Regulation (GDPR)—as alleged unfair commercial practices, breaches of consumer protection laws, or violations of the prohibition on invalid general terms and conditions—when they are not asserting the rights of any individual data subject and have not been mandated to bring the action by affected individuals.

The Court of Justice's analysis focused on the GDPR's language, in Article 80, and broader intent of ensuring harmonization of national laws on data protection. Article 80 allows a Member State to authorize any entity whose statutory objectives are in the public interest and which is active in the field of personal data protection to lodge a complaint, without a data subject's mandate, if it considers the rights of a data subject to have been infringed. Germany already had in place a national law allowing consumer protection associations to bring proceedings concerning infringement of personal data protection laws. The Court of Justice concluded that the GDPR does not prohibit such legislation, provided standing is limited to instances where the relevant data processing is liable to affect the rights of identified or identifiable individuals under the GDPR. Advocate General Richard de la Tour had reached the same conclusion in his [opinion](#) delivered on December 2, 2021.

### CJEU Advocate General Concludes Individuals May Seek Compensation for Health Effects of Air Pollution

#### Lisa Reinsberg, International Justice Resource Center

On May 5, Advocate General Juliane Kokott of the Court of Justice of the European Union delivered her opinion in

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Case C-61/21, *JP v. Ministre de la Transition écologique & Premier ministre* on whether Directive 2008/50/EC entitles individuals to claim compensation from a Member State for damage to their health directly linked to a deterioration in air quality when the State is in breach of its obligations under the directive. The Administrative Court of Appeal in Versailles, France requested the preliminary ruling with regard to articles 13(1) and 23(1) of the Directive, which require Member States to “ensure” that levels of certain pollutants do not exceed specified levels and to establish air quality plans for zones where those limits are exceeded, respectively.

In her opinion, Advocate General Kokott noted that individuals are generally entitled to compensation if a State’s infringement: contravenes a rule intended to confer rights on them, is sufficiently serious, and is directly causally linked to the damage they have suffered. Turning to the first component, Advocate General Kokott concluded that the relevant articles establish clear, distinct obligations on the part of Member States with the incontrovertible aim of protecting individuals’ health. In view of the Court’s decisions holding Member States accountable for failure to meet air quality standards, the “significant adverse effects on health,” and the disproportionate burden on “people of low socio-economic status,” the Advocate General concluded the EU did intend to create an individual right, despite the large number of potential claims.

Those seeking compensation may demonstrate a sufficiently serious infringement if a Member State exceeds the air pollution limit values and lacks a plan (without “any manifest deficiencies”) to remedy the exceedance as of the time limit for meeting those levels. The Advocate General further concluded that an individual must prove “he or she has stayed, for a sufficiently long period of time [as determined by science], in an environment in which limit values for ambient air quality under EU law have been seriously infringed.” The individual must also show the existence of damage linked to that air pollution and a direct causal link between the stay and the damage. The Advocate General declined to determine the appropriate standard and burden of proof necessary to prevail on these claims.

## Kosovo Specialist Chambers Pronounce Trial Judgment in Gucati and Haradinaj Case

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

On May 18, a Trial Panel of the Kosovo Specialist Chambers pronounced its judgment in the Specialist Prosecutor’s case against Hysni Gucati and Nasim Hardinaj. Both defendants had stood trial before the Trial Panel for charges related to their conduct in obtaining and disseminating confidential documents pertaining to the work of the Specialist Prosecutor’s Office (SPO) through re-publication, the hosting of press conferences, and various media appearances. Through this dissemination, the Specialist Prosecutor also alleged the defendants had made public disparaging and threatening remarks about confidential witnesses listed in the documents in direct violation of KSC court orders.

The Trial Panel recognized the defendants did not dispute their alleged conduct, yet claimed to have been entrapped by the SPO and to have acted out of concern for public interest in disseminating the documents. The Trial Panel rejected these defenses, finding the defendants had failed to present an objective basis to believe they had been entrapped and could not present evidence to prove their actions were justified in pursuing a claimed public interest. Moreover, the Trial Panel concluded that neither defendant qualified as a whistleblower, and was thus not entitled to whistleblower protections afforded by the European Convention on Human Rights and Kosovar law.

The Trial Panel found both defendants guilty of obstructing official persons in performing official duties by serious threat and by participating in the common action of a group; intimidation during criminal proceedings; and violating the secrecy of proceedings through unauthorized revelation of secret information disclosed in official proceedings and the identifies and personal data of protected witnesses. The Trial Panel deemed the defendants not guilty on charges of retaliation, finding that neither defendant published confidential witness information in retaliation for those witnesses’ provision of truthful information to prosecutors, as the defendants had no knowledge as to the truthfulness of the witnesses’ testimony. The Trial Panel sentenced each defendant to four and a

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## Opportunities

### Awards, Grants & Prizes

#### Asian Law and Society Association Awards

The Asian Law and Society Association is seeking nominations for four 2022 awards: (1) the ALSA Distinguished Book Award; (2) the ALSA Distinguished Article Award; (3) the ALSA Graduate Student Article Award; and (4) the AsianJLS-ALSA Graduate Student Paper Competition. The description of each award, including eligibility and nomination procedures are available in the [Call for Nominations](#). The deadline for all award categories is July 31, 2022.

#### Prize for Best Article in International Dispute Resolution

The ASIL Dispute Resolution Interest Group (DRIG) has announced the inaugural “Prize for Best Article in International Dispute Resolution,” to be awarded to the author(s) of a piece published in 2021. The winner will be announced at the 2023 ASIL Annual Meeting, and the prize includes a certificate of recognition and several complimentary memberships or registrations. Eligibility criteria and other details are available in the announcement on the DRIG [webpage](#). Submissions must be received by October 31, 2022.

#### ECR Prize in Legal Scholarship

The Australian National University College of Law intends to award its annual ANU Press ECR Prize in *Legal Scholarship* to the most outstanding and insightful manuscript submitted to ANU Press in any area of law and legal studies by an early career researcher. The prizewinner will receive AU\$2,500, have costs covered for publishing an open-access monograph up to 80,000 words with ANU Press, and will receive an invitation to visit

### Notable Judgments & Decisions

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half years of imprisonment, and a fine of one hundred euros. In presenting its judgment, The Trial Panel emphasized the importance of this ruling by noting that the judgment reflects the “very reason” why the KSC was created: to ensure the proper administration of justice and the security of proceedings and to protect the “safety, well-being and freedom” of witnesses. ■

ANU to launch the book at an ‘ANU Press Lecture in Law’. Eligibility criteria and submission instructions are available on the ANU [webpage](#). Submissions must be received by December 9, 2022.

### Conferences, Webinars & Programs

#### International Criminal Court at 20: July 1

The International Criminal Court has announced a conference to commemorate the twentieth anniversary of the entry into force of the Rome Statute. The conference, “International Criminal Court at 20: Reflections on the Past, Present and Future,” will take place on July 1 at the World Forum conference center in The Hague and will also be webcast via YouTube. The conference programme is linked to from the conference [webpage](#).

#### Courts as an Arena for Societal Change: July 8-9

Leiden University is hosting the second Conference of the Research Group on Institutions for Conflict Resolution, with the theme of “Courts as an Arena for Societal Change.” This conference presents an opportunity to bring together researchers and practitioners from around the world to discuss the evolving role of the judiciary in addressing difficult and contentious social and political issues. The conference will take place in person at Leiden University, the Netherlands, in the English language, and further information can be found on the [conference website](#).

#### International Empirical Legal Studies Conference: September 1-2

The Empirical Legal Studies (ELS) Academy will be hosting an International Empirical Legal Studies Conference at the Vrije Universiteit in Amsterdam. Further information can be found on the conference’s [webpage](#).

#### European Society of International Law Annual Conference: September 1-3

The 17th Annual Conference of the European Society of International Law will take place in Utrecht, the Netherlands from September 1 to 3, with a theme of “In/Exclusiveness of International Law.” ESIL interest groups will hold workshops before the conference beginning on

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## Opportunities —continued from page 11

August 31. Additional information is available on the conference [website](#).

### International Law Weekend: October 20-22

The American Branch of the International Law Association (ABILA) will host its annual International Law Weekend from October 20 to 22 in New York City. This year's theme is "The Next 100 Years of International Law," with a focus on opportunities to "reevaluate the core features of international law" in light of ABILA's centennial. Additional details are available on the International Law Weekend [webpage](#). ASIL ICTIG member Floriane Lavaud is co-chair of the Organizing Committee, of which ICTIG advisors Lisa Reinsberg and Lucía Solano are also members; they welcome questions and expressions of interest in contributing to the event.

### 2023 ASIL Annual Meeting: March 29-31, 2023

The American Society of International Law seeks idea submissions for its 2023 Annual Meeting, on the theme of "The Reach and Limits of International Law to Solve Today's Challenges." Additional information and the idea submission form can be accessed on the meeting [webpage](#).

## Calls for Papers

### American Journal of International Law: Agora Symposium on Ukraine

The *American Journal of International Law* has issued a [call for papers](#) for an Agora symposium on the topic of "The War in Ukraine and the Future of the International Legal Order," to be published in October 2022. Submissions should not exceed 5,000 words including footnotes and are due June 20.

### University of Public Service: War and Peace in the 21st Century

The Department of International Law at Ludovika - University of Public Service in Budapest, Hungary invites abstracts for proposed presentations and articles on the topic of "War and Peace in the 21st Century - The Lifecycle of Modern Armed Conflicts." The conference will take place at the Ludovika campus on September 23, and accepted manuscripts would be due December 31.

Additional details are available on the conference [webpage](#). Abstract submissions are due July 15.

### Journal of International Law of Peace and Armed Conflict: Humanity in International Armed Conflicts

The Journal of International Law of Peace and Armed Conflict invites submissions of articles for its forthcoming issue on "Humanity in International Armed Conflicts." The issue will highlight issues of international humanitarian law against the backdrop of the Russian-Ukrainian War. The deadline for submissions is July 15, and additional instructions are available in the [Call for Papers](#).

### PluriCourts Centre: Beyond State Consent to International Jurisdiction

The State Consent to International Jurisdiction project (funded by the Research Council of Norway) run by Prof. dr. Freya Baetens at the PluriCourts Centre, Oslo University, is holding a virtual conference on 29-30 September 2022. The theme of the conference is "Beyond State Consent to International Jurisdiction". A Call for Papers will be issued shortly. People interested in receiving the call should check the project's [website](#) towards the end of June.

### Workshop on Non-Use Measures for Global Goods and Commons in International Law

The Netherlands Institute for the Law of the Sea (NILOS), the Utrecht Center for Water, Oceans and Sustainability Law (UCWOSL) of Utrecht University, and the Royal Netherlands Institute for Sea Research (NIOZ) invite submissions for a workshop on Non-use Measures for Global Goods and Commons in International Law. The workshop will be held in Utrecht, Netherlands on May 8-9, 2023. Abstract submissions are due July 31, with additional information available in the [Call for Papers](#).

### German Yearbook of International Law

The German Yearbook of International Law is accepting submissions for volume 65, to be published later this year. Articles may address any topic of public international law. Submissions will be reviewed on a rolling basis, and should be submitted by August 1. The call for papers is available from the GYIL [website](#).



## Opportunities —continued from page 12

### **NUP Jean Monnet Working Papers**

The Jean Monnet Chair of the Neapolis University Pafos (NUP) welcomes contributions by young and senior scholars for the online publication series “NUP Jean Monnet Working Papers”. They accept manuscripts on topics related to economic crime, money laundering, the financing of terrorism, asset recovery, asset freezes and confiscation, financial investigations, judicial cooperation in criminal matters, etc., with emphasis on the EU law dimension of the topic examined. Submissions will be reviewed on a rolling basis, and more information is available in the [call for papers](#).

### **Job Postings & Other Opportunities**

#### **Assistant Professor in Public International Law, School of Law at Trinity College Dublin**

The School of Law at Trinity College Dublin is recruiting an Assistant Professor in Public International Law, a full-time, tenure track position. Details are available in the [posting](#). Applications are due on June 18.

#### **Associate Country Expert (P-2) (Ukraine), International Criminal Court**

The ICC is accepting applications for a short-term Associate Country Expert on Ukraine. Additional details are available in the [posting](#). Applications are due by June 19.

#### **Senior Lecturer/Lecturer in International Economic Law, University of Glasgow**

The School of Law at the University of Glasgow seeks applicants for a Senior Lecturer or Lecturer in International Economic Law. Additional details are available in the [posting](#), which can be found via the University of Glasgow’s [vacancies](#) page. Applications are due June 20.

#### **Various Positions, Kosovo Specialist Chambers**

The Kosovo Specialist Chambers is currently hiring for various positions including Prosecutors, Associate Prosecutors, and Investigators. A full list of vacancies and application instructions are available in the [Call for Contributions](#). The deadline for applications has been extended to June 24 at 17:00 hours (Brussels Time).

#### **Lecturer/Professor, Department of Public Law, University of Pretoria**

The Department of Public Law in the Faculty of Law of the University of Pretoria seeks applicants for one opening, which may be as a Lecturer, Senior Lecturer, Associate Professor or Professor, depending on qualifications, with a focus on human rights law, constitutional law, and socio-economic rights. Additional details are available in the [posting](#). Applications are due June 24.

#### **Associate Legal Officer (P-2), International Tribunal for the Law of the Sea**

ITLOS has announced an Associate Legal Officer vacancy in the Registry, to be based in Hamburg, Germany. Details are available in the [posting](#). Applications are due by June 28.

#### **Investigators, International Criminal Court**

The International Criminal Court is seeking applicants for an [Associate Investigator](#) (P-2) and an [Investigator](#) (P-3), assigned to various duty stations. Applications are due June 28.

#### **Research Associate, Oceans Law and Policy Team, National University of Singapore**

The National University of Singapore’s Center of International Law is seeking applications for a Research Associate for a period of two years from candidates with an LLM related to public international law, law of the sea or maritime law and a demonstrable interest in oceans law and policy. Additional details about the role and application instructions are available in the [posting](#). Applications close on July 15.

#### **Advisory Board Member, ASIL’s International Courts & Tribunals Interest Group**

The ICTIG is soliciting nominations, including self-nominations, from interest group members to fill two vacancies on our Advisory Board. Advisory Board members will contribute to the running of the interest group, especially by organizing ICTIG events. Nominations, including a short statement of interest, should be sent to the two Co-chairs, Freya Baetens ([freya.baetens@jus.uio.no](mailto:freya.baetens@jus.uio.no)) and Massimo Lando ([mflando@cityu.edu.hk](mailto:mflando@cityu.edu.hk)), by 6:00pm EDT on July 15. ■



## 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 box below for submission guidance.*

**Professor Marcelo Kohen** has been proposed as a candidate for the 2023 elections of the International Court of Justice, representing the Latin America and Caribbean region. An Argentine citizen, he is currently professor at the Geneva Graduate Institute and the Secretary General of the Institut de Droit international. In addition to his academic activity, Professor Kohen has extensive practice as counsel before the ICJ and as an arbitrator in investment tribunals. The last Argentine judge at the ICJ was José María Ruda, more than 30 years ago. You can find the note of the Support Committee signed by former judges of the International Court of Justice and of other international courts and tribunals, former rapporteurs, professors, members of the national groups of the Permanent Court of Arbitration, among others, on [LinkedIn](#), [Twitter](#), or [Facebook](#).

**Catherine van Kampen**, Esq., based in New York, has recently been appointed to serve in the following positions: Co-chair, American Bar Association's International Law Section – Women's Interest Network; Chair, New Jersey State Bar Association's International Law Committee; and Co-chair, New York State Bar Association's Committee for Leadership Development. Catherine currently serves on the New York State Bar Association's International Law Committee's Ukraine Task Force and Ukraine Immigration Law Committee which is assisting Ukrainians fleeing war. Catherine also serves as

the Co-chair of the New York City Bar Association's United Nations Committee and is a member of the NYCBA's Council for International Affairs. She is Chairwoman of NL Helpt Yezidis (NLHY) and a pro bono legal advisory to the Yezidi Legal Network (YLN), both based in Amsterdam, The Netherlands, which issued the [Yezidi Genocide Justice Campaign Report](#) in January 2022. She welcomes collaboration with other attorneys interested in assisting legal projects focused on the most vulnerable, most especially religious and ethnic minorities from Iraq and Syria.

**Sara L. Ochs** was recently awarded a Fulbright Award to research at the University of Gothenburg's School of Global Studies in Sweden during the 2022-2023 year. As a U.S. Fulbright Scholar, Sara will research the use of transitional justice measures for indigenous communities in Scandinavia and lecture in the fields of international law, transitional justice, and peace and stability. ■

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