

International Courts & Tribunals Interest Group Newsletter

Introductory Note

ICTIG is delighted to bring to you the Winter 2023 issue of our Newsletter. On 30 November, we co-organized and co-hosted together with the interest group on international courts and tribunals of the Latin American Society of International Law (LASIL) an event on “The Role of International Courts and Tribunals (ICTs) in Climate Change Litigation.” Based on a call for papers, a diverse group of early-career scholars was selected to present their research on the opportunities and challenges that ICTs face in contentious and advisory proceedings relating to climate change. On 13 December, we co-hosted with the interest group on international courts and tribunals of the European Society of International Law (ESIL) another event on “The Developments in Interstate Dispute Settlement before Regional Human Rights Courts.” These events show our genuine interest in promoting collaboration between ASIL and other societies.

We would like to thank Sara Ochs and Lisa Reinsberg, who are stepping down as editors of the Newsletter, but who will continue contributing to the work of the Interest Group as members of its Advisory Board. We are grateful for their hard work and dedication, which have paid off in making the Newsletter a valuable resource to our members and beyond. We are also pleased to let you know that Farah El Barnachawy, Craig Gaver, and Isaac Webb have recently joined as new editors of the Newsletter. They bring a complementary set of skills, knowledge, and experience, and we very much look forward to working with them. Welcome on board Farah, Craig, and Isaac!

-Massimo Lando & Vladyslav Lanovoy, Co-Chairs

ICTIG Events



ICTIG, LASIL, and FGV host online panel on The Role of International Courts and Tribunals in Climate Change Litigation

On 30 November 2023, the International Courts and Tribunals Interest Groups of ASIL and Latin American Society of International Law, together with the Fundação Getulio Vargas Centre (FGV) for Global Law at Rio de Janeiro Law School, jointly organized and hosted an online panel on “The Role of International Courts and Tribunals in Climate Change Litigation.” The event was based on a call for papers, and included

papers presented by Ankit Malhotra, Melissa Stewart, Lucas Carlos Lima and Rodrigo Machado Franco, Giulia Tavares Romay and Helena Marino Lettieri de Campos. Harvey Mpotto Bombaka, Senior Researcher of the FGV Centre for Global Law, acted as discussant. Paula Wojcikiewicz Almeida (Chair, LASIL ICTIG) and Vladyslav Lanovoy (Co-Chair, ASIL ICTIG) moderated the panel.

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Views contained in this publication are those of the authors in their personal capacity. The American Society of International Law and this Interest Group do not generally take positions on substantive issues, including those addressed in this periodical.



Developments at International Courts & Tribunals

UN General Assembly and UN Security Council Elect Five New Judges to the ICJ

On November 9, 2023, the UN General Assembly and Security Council, acting simultaneously but separately, elected five new judges to the International Court of Justice. They are Bogdan-Lucian Aurescu (Romania), Hilary Charlesworth (Australia), Sarah Hull Cleveland (United States), Juan Manuel Gómez Robledo Verduzco (Mexico) and Dire Tladi (South Africa). Their terms begin on February 6, 2024.

Judge Burgess' 10-Year Tenure on World Bank Administrative Tribunal Ending

After serving two consecutive five-year terms on the World Bank Administrative Tribunal (the maximum allowed under the Tribunal's Statute), Judge Burgess' tenure on the Tribunal will soon be coming to an end. The World Bank has announced a search for his replacement, and Judge Burgess will continue to serve until his successor begins their five-year term of appointment.

Three Regional Human Rights Courts Issue Joint Report

Last month, the African Court on Human and Peoples' Rights, European Court of Human Rights, and Inter-American Court of Human Rights issued Joint Law Report, Volume 3 (2021), which comprises major cases that represent new standards or innovative case-law developments during the year 2021. The report is available [here](#) from the ACtHR's website and on the other courts' websites.

New Guidance Issued by European Court of Human Rights

The European Court of Human Rights published a new version of the Rules of Court, which incorporates the new Rule 44F on the treatment of highly sensitive documents. The new version also amended Rule 33(1) (public character of documents) in light of the change. These amendments were adopted by the Plenary Court on 25 Septem-

ber 2023 and entered into force on 30 October 2023. The purpose of the new Rule is to establish a specific regime for the handling of highly sensitive documents which a State party considers require special treatment for reasons of national security, or which an applicant considers require special treatment for other equally compelling reasons. The full text of the Rules, including the amendments, is available [here](#).

The Court also issued an updated version of the Guidelines on the implementation of the advisory opinion procedure under Protocol No. 16. The updated Guidelines concern, among other things, the Court's jurisdiction in respect of requests for advisory opinions (paragraphs 6.3 and 7), the appropriate stage at which to submit a request (paragraph 10), the form and content of a request (paragraphs 12, 13 and 14), and the delivery of the Court's opinion (paragraph 32). The changes mainly reflect aspects of the practice developed by the Court under the Protocol. The updated Guidelines can be found on the Court's website [here](#).

Inter-American Court of Human Rights Elects New Leadership

During its 163rd regular session, the Inter-American Court of Human Rights elected Nancy Hernández López, a Costa Rican national, as its new President, and Rodrigo Murovitsch, a Brazilian national, as its new Vice-President. Their two-year term will begin on 1 January 2024 and end on 31 December 2025. Both have been members of the Court since 2022.

International Criminal Court issues Final Report on Colombia

On 30 November 2023, the ICC's Office of the Prosecutor issued its [Final Report on the Situation in Colombia](#), following the [determination](#) of Prosecutor Karim A.A. Khan KC in October 2021 to conclude the preliminary examination with a decision not to proceed with an investigation on the basis of the Office's admissibility assessment.

Notable Judgments & Decisions

ICJ Indicates Provisional Measures in *Guyana v. Venezuela*

Farah El Barnachawy, PhD Candidate, Paris I Panthéon-Sorbonne

On 30 October 2023, Guyana filed a request for the indication of provisional measures in *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)* and the definitive settlement of the land boundary dispute between both States. The trigger for Guyana's request for provisional measures was Venezuela's planned consultative referendum on 3 December 2023, considered by Guyana as a means by which to buttress Venezuela's decision to abandon the ongoing proceedings.

The Court unanimously indicated the following measures: (i) Venezuela should refrain from taking any action that would modify the existing situation in the disputed area where Guyana administers and exercises control; (ii) both parties must refrain from action that may aggravate the situation or render the dispute more difficult to resolve.

In its analysis, the Court found that Guyana has a plausible right of sovereignty over the territory in dispute between the Parties. It also noted that a link exists between this plausible right and its request for a measure seeking to prevent Venezuela from taking any steps that would lead to an exercise of sovereignty or *de facto* control over any territory awarded to British Guiana in the 1899 Arbitral Award. The Court also determined that there is a real and imminent risk that irreparable prejudice will be caused to the right claimed by Guyana. Further, it found that the urgency threshold required for the indication of provisional measures was met for the following reasons: the fifth question in the consultative referendum, which proposed an accelerated and comprehensive plan to grant Venezuelan citizenship and identity cards to the population of the disputed territory; and acts and statements from the Venezuelan government, military officials, and Supreme Court, all expressing a readiness by Venezuela to take action at any moment following the scheduled referendum and before the Court makes its final decision on the merits.

As such, the Court concluded that the conditions for the indication of provisional measures were met, and in so holding clarified that it needed not indicate measures identical to those requested by Guyana, pursuant to Article 75 paragraph 2 of the Rules of the Court.

New Publications

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

Books & Book Chapters

- Shea Esterling, '*Indigenous Cultural Property and International Law: Restitution, Rights and Wrongs*', (Routledge, 2023).
- Peter Bekker, '*Arbitration of International Disputes in New York*', (Juris, 2023).
- Ezgi Yildiz, '*Between Forbearance and Audacity: The European Court of Human Rights and the Norm against Torture*', (Cambridge University Press, 2023).

ILO Requests Advisory Opinion on "Right to Strike"

Philipp Kotlaba, U.S. Department of State, Office of the Legal Adviser

On November 10, the International Labour Organization, the oldest affiliated specialized agency of the United Nations, requested an advisory opinion from the International Court of Justice on a single question: whether the Freedom of Association and Protection of the Right to Organise Convention of 1948 (No. 87) protects "the right to strike of workers and their Organizations."

The dispute over the existence of a "right to strike" has for decades divided different sections of the ILO's Governing Body, which features a unique tripartite division among representatives from governmental, employer, and worker groups. The Worker's Group, citing "observations" by the ILO's Committee of Experts on the Application of Conventions and Recommendations, insists that the right to strike derives from Convention No. 87's reference to the "right to organise and formulate programmes." The Employer's Group considers that the ILO's conventions do not encompass a right to strike. Moreover, in the absence of a treaty basis, the Employers' Group does not consider that aspects relating to such a right, particularly in the Committee of Experts, to be appropriate matters for scrutiny.

Apart from the underlying interpretive question, the ILO could have posed a second question to the Court: the

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scope of the Committee of Experts' power to make interpretations of ILO conventions. The Employer's Group, for example, has complained of the Committee of Experts overstepping its mandate by proffering, in the absence of the right's explicit enumeration in Convention No. 87, a detailed elaboration of its purported scope and meaning, coupled with commentaries on specific cases in member States. Although the issue of competence was not ultimately included in the advisory opinion request, one may take interest in the degree to which the Court may rely upon the Committee of Expert's expansive work on the subject.

The ICJ has set a May 16, 2024 deadline for eligible States and organizations to submit written statements to the Court, with comments on the other written statements due September 16.

ICJ Issues Provisional Measures Order in *Canada and the Netherlands v. Syria*

Paul Strauch, Associate, Covington & Burling

On November 16, the International Court of Justice by a 13-2 vote issued an order indicating provisional measures in *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syrian Arab Republic)*.

Canada and the Netherlands jointly instituted proceedings and filed the request for provisional measures on June 8. They contend that Syria has violated its obligations under the CAT in various ways, including through its commission of acts of torture and other cruel, inhuman or degrading treatment or punishment ("CIDTP"). According to the Applicants, the violations began with Syria's violent repression of civilian demonstrators during 2011 and have continued through the ensuing armed conflict. Oral proceedings on the provisional measures request were postponed from July to October 10 to facilitate Syria's participation but, on October 9, Syria communicated that it would not participate and subsequently detailed its position in a letter dated October 10.

In its Order, the Court established its *prima facie* jurisdiction under the CAT's compromissory clause, finding that the Parties' prior bilateral exchanges manifested a difference of views regarding whether the alleged acts and omissions give rise to CAT violations and that the procedural preconditions, including attempted negotiation and

arbitration, had been satisfied. With respect to standing, the Court considered that the Applicants were entitled to proceed with their claims because, as pronounced in *Belgium v. Senegal*, the CAT obligations are owed *erga omnes partes* and thus provide all parties with a "common interest" in their compliance.

The Court adopted two provisional measures. The first requires Syria to prevent acts of torture and other CIDTP and to ensure that its officials, and organizations or persons under its control, do not commit such acts. The second requires the preservation of evidence related to the allegations. In arriving at its conclusion, the Court also explained that the claimed rights were plausible and linked to some requested measures, and it found that "the measures to be indicated need not be identical to those requested." To demonstrate the requisite risk of irreparable prejudice and urgency, the Court relied in particular on reports of the Independent International Commission of Inquiry on the Syrian Arab Republic and a December 2022 General Assembly resolution. Among the cited evidence are a March 2021 Commission report characterizing torture as a "hallmark of the conflict" and an August 2023 report finding "reasonable grounds to believe that the Government continued to commit acts of torture and ill-treatment." The Court also referred to the Commission's documentation of sexual and gender-based violence, including its February 2023 conclusion that sexual violence in government-controlled detention facilities "continues to occur countrywide."

Vice-President Gevorgian and Judge Xue voted against both the measures. In his dissenting opinion, Vice-President Gevorgian maintained that the Applicants had not provided sufficient evidence of attempted negotiation. In her declaration, Judge Xue rejected the possibility of standing based on the Applicants' asserted "common interest" in the CAT obligations, referring to her prior opinions regarding standing in *Belgium v. Senegal* and *The Gambia v. Myanmar*.

ICJ Indicates Provisional Measures in *Armenia v. Azerbaijan*

Massimo Lando, Assistant Professor, University of Hong Kong

On November 17, 2023, the International Court of Justice handed down its fifth order on provisional measures in less

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than two years in the case filed by Armenia against Azerbaijan in September 2021. That case stems from the Nagorno-Karabakh conflict and concerns alleged violations of obligations under the 1965 Convention for the Elimination of All Forms of Racial Discrimination (“CERD”). The order is the Court’s seventh on provisional measures in relation to Armenia and Azerbaijan, if one counts the two orders in the parallel case filed by Azerbaijan against Armenia also in September 2021, also under CERD, and also stemming from the same conflict. The ICJ indicated provisional measures already in the first and third order in *Armenia v Azerbaijan* and in the first order in *Azerbaijan v Armenia*. All of the measures indicated aimed at limiting the adverse effects on rights enjoyed under CERD, especially safeguarding cultural heritage, curbing the promotion of racial hatred by public authorities, and ensuring the safe passage of persons along the Lachin corridor connecting Nagorno-Karabakh to Armenia.

In its order of November 17, 2023, the ICJ determined that, as Armenia requested the indication of additional provisional measures, there had to be a change in the situation between the parties that warranted such indication. The ICJ found that change to be the forced displacement of persons after a military attack by Azerbaijan. Having found in previous orders that it had *prima facie* jurisdiction and that the rights claimed by Armenia were plausible, the Court seemed to have no difficulty in making the same findings in this instance. More complex was its analysis on irreparable prejudice, especially given that the Agent of Azerbaijan had made an undertaking in open court aimed at addressing the concerns raised by Armenia in the proceedings. The Court found that the undertaking created legal obligations for Azerbaijan, but that it did not address all situations to which Armenia referred in its request for provisional measures. The undertaking notably did not cover the situation of individuals who wish to remain in Nagorno-Karabakh but may wish to leave at a future time, depending on the development of the situation in the region. The Court thus indicated that Azerbaijan must ensure that (i) such individuals, as well as individuals who left the region and wish to return, can do so in a safe and unimpeded manner; and (ii) all persons who stay or return to the region will be free from the use of force or intimidation causing them to flee.

International Criminal Court Withdraws Charges against Maxime Mokom

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

On October 17, in response to the ICC Prosecutor’s notice of the withdrawal of charges against Maxime Jeoffroy Eli Mokom Gawaka (“Maxime Mokom”), the ICC Pre-Trial Chamber II *withdrew* such charges, terminated the proceedings in the case against Mokom, and ordered his immediate release from ICC detention. The Prosecutor initially charged Mokom with various war crimes and crimes against humanity, including murder, pillaging, and persecution allegedly committed during his role as the former National Coordinator of Operations of the Anti-Balaka, a militia group in the Central African Republic (“CAR”). The Prosecutor issued the arrest warrant in December 2018, and Mokom was taken into ICC custody in March 2022. At the confirmation of charges hearing in April 2023, the Pre-Trial Chamber ordered the parties to submit written submissions on the merits of the case.

On October 16, the ICC Prosecutor informed the Pre-Trial Chamber of his intent to withdraw charges against Mokom, noting that “in light of changed circumstances,” there was no “reasonable prospect of conviction at trial even if the charges were confirmed.” Specifically, the Prosecutor recognized that several critical witnesses were no longer able to testify against Mokom, and his office was unable to secure additional witnesses.

In considering the Prosecutor’s notice, the Pre-Trial Chamber concluded that Rome Statute article 61(4) applied, which permits the Prosecutor to withdraw charges before the confirmation hearing. Specifically, it reasoned that the confirmation of charges hearing had not yet ended, as the Pre-Trial Chamber was still awaiting the receipt of written submissions from the parties that had been ordered at the April 2023 hearing. The Pre-Trial Chamber thus ordered that the charges be withdrawn and that Mokom be released from ICC detention immediately, with the Registry responsible for arranging for him to be transferred to a State obliged to receive him.

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CJEU Advocate General Deems Cumulative Effect of Discriminatory Measures Against Women by the Taliban Regime to Be Persecution

Farah El Barnachawy, PhD Candidate, Paris I Panthéon-Sorbonne

On November 9, 2023, the Advocate General of the Court of Justice of the European Union (CJEU), Richard de la Tour, delivered an [opinion](#) on two Afghan women's applications for international protection in Austria on the grounds that the accumulation of discriminatory acts and measures imposed by the Taliban amounted to persecution. The two issues at hand were: first, whether the accumulation of measures by the Taliban could be considered sufficiently severe; and second, whether it is possible to grant asylum status solely on the grounds of gender without proceeding to an assessment of the applicant's individual situation to determine whether she is affected by those measures.

The Advocate General considered that the measures imposed by the Taliban amount to acts of persecution within the meaning of Article 9 of Directive 2011/95 due to the severe, systematic, and institutionalized discrimination against Afghan women and girls. He explained that "persecution" should be interpreted as to include an accumulation of discriminatory acts and measures. These can include physical violence and other varied and continually evolving forms of persecution such as legal, administrative, police or judicial measures. By their repetition, such acts, even if not sufficiently serious by their nature, may constitute a severe violation of basic human rights and attain a high degree of severity. The interference with a basic right must be "sufficiently serious" and have a "significant effect on the person concerned" in order to amount to persecution. The Advocate General concluded the various restrictions on health; education; work; freedom of movement and political participation, amongst others, amount to depriving women of their most essential rights in society and undermine the full respect for human dignity as embodied by Article 2 of the Treaty on the European Union and Article 1 of the Charter of Fundamental Rights of the European Union.

On the second question, the Advocate General concluded that Directive 2011/95 allows Member States to consider an applicant's gender as the sole basis by which to grant

asylum, when grounded in a well-founded fear of persecution. Member States need not consider other factors particular to the applicant's personal circumstances. This is because the discriminatory measures against Afghan women and girls are part of a wider regime of segregation and oppression, which has been supported by various reports issued by international, regional, and non-governmental organizations and a ruling by the European Court of Human Rights. Thus, the applicant is not required to prove that a real risk exists due to particular circumstances or characteristics.

African Court Holds Côte d'Ivoire Responsible for Multiple Violations in Toxic Waste Disaster

Lisa Reinsberg, International Justice Resource Center

On September 5, the African Court on Human and Peoples' Rights delivered its [judgment](#) in the case of *Ligue Ivoirienne des Droits de l'Homme (LIDHO) and Others v. Côte d'Ivoire*, concerning a toxic waste disaster. In August 2006, a cargo ship chartered by the multinational company Trafigura docked in Abidjan and offloaded 528 cubic meters of highly toxic waste, which a newly-permitted company dumped locally at sites that lacked chemical waste treatment facilities. Seventeen people died of toxic gas inhalation in the ensuing days, thousands reported health problems, and hundreds of thousands were affected by severe groundwater contamination.

Trafigura agreed to pay the State nearly USD 200 million in reparation and clean-up costs in exchange for immunity from prosecution. While some victims received compensation from the State or as a result of their civil suits, many were not recognized as proven victims. Only the agents of the local waste disposal company were convicted on poisoning charges.

Before the AfCHPR, Côte d'Ivoire made numerous unsuccessful preliminary objections on jurisdictional and admissibility grounds, but did not present arguments on the alleged violations.

On the merits, the AfCHPR held that Côte d'Ivoire had violated the rights to an effective remedy, to health, to a satisfactory general environment, and to life when it failed to adequately mitigate the risk of contamination, to

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enforce domestic and international norms prohibiting the import and dumping of toxic waste, to fully investigate and prosecute those responsible, to adequately remediate the contamination, and to provide reparation to all victims. The Court also held that the State's failure to adequately inform the public of the contamination and its implications and the process for claiming reparation violated the right to information.

Among other forms of reparation, the Court ordered Côte d'Ivoire to establish a victim compensation fund with the money received from Trafigura, reopen its investigation, and amend its laws to allow for corporate criminal liability for environmental harms. Judge Blaise Tchikaya *dissented*, arguing that the majority decision did not adequately establish the State's liability and urging the Court to adopt a clearer legal analysis of third-party harms.

CJEU Finds Austrian Law Restricting Online Platforms Violates EU Regulations

In a judgment of November 9, 2023, the Court of Justice of the European Union ("CJEU" or the "Court") *held in the case of Google Ireland and others v. KommAustria (C-376/22)* that Austria had impermissibly attempted to restrict the activity of online platforms, including Google, Meta, and TikTok, by passing a law requiring them to take certain measures against illegal online content.

The appellants, Google Ireland, Meta Platforms Ireland, and Tik Tok Technology, are companies established in Ireland that provide online services in other EU Member States, including Austria. An Austrian law passed in 2020, (the "KoPI-G"), requires both Austrian and foreign providers of "communication platforms" in Austria to comply with certain requirements, including providing a system for notification and review of allegedly illegal content. The appellants challenged the law in an Austrian court, arguing that it was contrary to EU rules.

Article 3(2) of Directive 2000/31/EC (the "Directive") states that "Member States may not . . . restrict the freedom to provide information society services from another Member State." Article 3(4) of the Directive, however, allows Member States to "take measures to derogate from Paragraph 2, in respect of a given information society service" if certain public policy or other conditions are met.

The CJEU held that Article 3(4) does not permit Member States to impose general and abstract measures aimed at a category of information society services, such as the KoPI-G. The Court noted that the purpose of the Directive is to ensure that EU-based information society services providers are regulated only by their home State, and are not subjected to additional regulations by the other Member States. The Court stated that measures such as the KoPI-G "would ultimately amount to subjecting the service providers concerned to different laws and, consequently, reintroducing the legal obstacles to freedom to provide services which [the Directive] seeks to eliminate."

ECtHR Rules on *Nulla Poena Sine Lege* and Fair Trial Rules

Stefan Kirchner, Frankfurt/Rhein-Main, Germany

On 26 September 2023, the Grand Chamber of the European Court of Human Rights *issued* its judgment in *Yüksel Yalçınkaya v. Türkiye (Application no. 15669/20)*. The Court found that the respondent state had violated its obligations under Articles 6(1) and 7(1) ECHR, relating to the right to a fair trial and the rule that there must be no punishment without a legal basis. The applicant had been suspected of membership in organizations that had been labeled by the Turkish State as terrorist organizations. The applicant had been convicted for membership in an armed terrorist organization on the grounds that the applicant had used an encrypted messaging application. The criminal court sentencing the applicant had, however, failed to establish the objective (material) and subjective (mental) elements of the crime with regard to the applicant as an individual. The applicant had used an encrypted messaging app and this fact alone was deemed sufficient for the national courts to amount to a membership in an armed terrorist organization.

The European Court of Human Rights found that, although in theory the applicant could have known, from an analysis of several pieces of existing legislation and national case law, that a penalty was possible for the applicant's actions, the interpretation used by the Turkish courts, equating the use of a specific software with membership in an armed terrorist organization, was not foreseeable. The Grand Chamber of the ECtHR accord-

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ingly found a violation of Article 7(1) ECHR. It also found that the manner in which electronic evidence had been used amounted to a violation of the right to a fair trial under Article 6(1) ECHR.

Inter-American Court of Human Rights Recognizes Colombia's Responsibility for Forced Disappearance

On August 23, the Inter-American Court of Human Rights (IACtHR) issued a judgment in *Guzmán Medina and others v. Colombia* on the forced disappearance of Arles Edison Guzmán Medina from Commune 13 in the city of Medellín, Colombia at the hands of the Cacique Nutibara Bloc (“BCN”) of the United Self-Defence Forces of Colombia. Guzmán Medina was at work with his wife on November 30, 2002 when two men arrived and asked that he get in a taxi to answer some questions; he has not been seen since.

The Court accepted Colombia's recognition of responsibility for Guzmán Medina's forced disappearance, finding that it occurred in the context of a military action dubbed “Operation Orion,” in which the BCN worked in concert with Colombia's National Army and which involved uniformed personnel from a number of Colombian State organs. The Court concluded that the BCN's actions were attributable to the Colombian State because governmental authorities “exercise[d] significant control” in the region, allowing non-State actors like BCN to operate freely. Moreover, the Court found that Guzmán Medina's disappearance occurred with the “collaboration and participation of State agents,” as Colombia admitted in its recognition of responsibility. As such, the Court held that Colombia was responsible for violating Articles 3 (right to juridical personality), 4 (right to life), 5 (right to humane treatment), and 7 (right to personal liberty) of the American Convention on Human Rights.

The Court further held Colombia liable for violating Articles 8.1 (right to a hearing, as part of the right to a fair trial) and 5.1 (right to respect for mental, physical, and moral integrity) of the American Convention on Human Rights by failing to investigate Guzmán Medina's disappearance. The Court ordered a number of different forms of reparation, including requiring Colombia to make a documentary about Guzmán Medina's disappearance to be broadcast on national television, pay damages, and continue to investigate the case.

Inter-American Court of Human Rights Rules for Mother in Case Concerning Separation of Child

Craig D. Gaver, Allen & Overy

On August 22, 2023, the Inter-American Court of Human Rights (IACtHR) issued a judgment declaring Argentina's responsibility in *Case of María et al. v. Argentina*, involving the birth of a child to a minor and the child's subsequent placement with an adoptive family.

María (a pseudonym) became pregnant at age 12 in 2014 amid family poverty and domestic violence. She was treated in a public hospital whose staff allegedly pressured her into giving the unborn child up for adoption despite the unavailability of prenatal adoption in Argentine law. A court later granted adoption rights to the López family (also a pseudonym). The hospital required María to deliver her child without the presence of María's mother or other family. Hospital staff then handed María's son over to the López family.

The following year formal proceedings were undertaken to formalize the adoption. At this point María expressed her desire to retain custody of her child. María and her family instituted several domestic proceedings, all of which were unsuccessful save for one that was still pending at the time she turned to the IACtHR. During the pendency of the various proceedings, María expressed her desire to meet her son and begin a bonding process (*un proceso de vinculación*). A State agency endorsed this request, but it took eight months to accomplish that meeting, which came two years after the child's birth.

The Court recognized the application of several rights under the Convention: the right to humane treatment (Article 5), the right to privacy (Article 11(2)), the rights of the family (Article 17), and the rights of the child (Article 19), as well as various rights relating to fair trial and judicial protection enshrined in Article 8(1) and 25. In particular, the Court found that María had not given free and informed consent to the adoption after the child's birth and that the delayed process for María to meet and bond with her son violated both her rights and the rights of her child. The Court also recognized that María, a minor herself, was in a position of vulnerability and was owed a special duty of

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Opportunities

Conferences, Webinars & Programs

The International Judicial Function under Pressure, February 8-9, 2024

The Geneva Centre for International Dispute Settlements (CIDS) of the University of Geneva and Graduate Institute of International and Development Studies is organizing a conference entitled “The International Judicial Function under Pressure” in the context of a research project led by Professor Laurence Boisson de Chazournes and Dr. Lorenzo Palestini. The conference serves as a platform to engage with ongoing research, discussing the judicial function in relation to State consent, judicial economy, standards of review, and encroachment. The conference will take place in Villa Moynier, Geneva, on February 8-9, 2024. More information is available [here](#).

Calls for Papers

Asian Privacy Scholars Network 2024 Conference

The Asian Privacy Scholars Network is calling for submissions of abstracts for its 2024 conference, which will focus on the interplay between international law and comparative law in the context of data governance in the Asia-

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protection by the State. The Court found that the various judicial proceedings failed to take account of this situation and deprived María of her right to be heard. In light of the total length of the process—8 years—delay contributed to a *de facto* situation of the child remaining with the López family despite María’s desire for reunion.

As reparation the Court ordered that state authorities (i) determine the child’s custody and legal status within one year, (ii) determine how to maintain contact between María and her son while taking his best interests and emotional development into account, and (iii) investigate whether there was any criminal misconduct involved in the state agency’s placement of the child with the López family. The Court also ordered Argentina to provide scholarships for both María and her son and further sums in compensation for the harm they suffered. ■

Pacific region. The deadline for abstract submissions is January 15, 2024. Further information can be found [here](#).

19th Annual Conference of the European Society of International Law

The European Society of International Law is accepting submissions for its 19th annual conference on how technological advances transform the international community and the main pillars of international law. The deadline for abstract submissions is January 31, 2024. Further information can be found [here](#).

Asian Society of International Law Intersessional Conference

The Asian Society of International Law will be holding its intersessional conference on the theme of *Asia and International Law: Historical Legacy and Progressive Development*. The deadline for the submission of individual abstracts is December 22, 2023. Additional information can be found [here](#).

Workshop on Comparative International Legal Policy: National Political Approaches towards International Legal Order

The Max Planck Institute for Comparative Public Law and International Law jointly with the Humboldt University of Berlin are convening a workshop to explore the dimensions of States’ international legal policies towards the construction of international legal order. Submissions are due on January 15, 2024 and additional information can be found [here](#).

Arguing over Empire: Hugo Grotius, European Expansionism and Slavery

The University of Amsterdam is organizing a workshop to explore the interlinkages between Grotius’ thinking about natural law and the law of nations and his defense of European expansion overseas and slavery. Submissions are due on January 15, 2024 and additional information can be found [here](#).

Call for papers - Hungarian Yearbook of International Law and European Law

The Hungarian Yearbook of International Law announced its call for papers for its upcoming twelfth volume. The

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'thematic part' of the next volume will focus on *Hungary in the European Union: 2004-2024*. Submissions are due on April 15, 2024 and additional information can be found [here](#).

Call for papers – Journal of International Law of Peace and Armed Conflict

The Journal of International Law of Peace and Armed Conflict has announced its call for papers for the first issue of 2024. The thematic focus will be Transitional Justice. Submissions are due on January 15, 2024 and additional information can be found [here](#).

Submissions Invited for Professor Surya Subedi Global Essay Prize

The Wilberforce Institute is pleased to invite submissions to the annual Professor Surya Subedi Global Essay Prize, dedicated to promoting awareness and scholarship on modern slavery abolition and the protection of human dignity. The award is named after University of Hull alumnus Professor Surya Subedi, who graduated in 1988 with a degree in Law.

This prestigious award invites submissions by graduates of original essays in English, before 31 December 2023. Through the generous support of Professor Surya Subedi, a distinguished figure in international law and human rights, an award of £500 will be given to the most exceptional contribution in terms of originality, organization, style, and presentation in the fields of law and social sciences/humanities, worldwide. The prize winner will be revealed in March 2024. The competition provides a significant platform for those dedicated to advancing the global understanding of these critical issues. For more information, please visit [here](#). Please make enquiries and submissions via SubediPrize@hull.ac.uk.

Job Postings & Other Opportunities

Law Clerk (Associate Legal Officer), International Court of Justice

The International Court of Justice is hiring multiple Law Clerks (P2) to provide research and other legal assistance to one of the judges of the Court. The position is based in The Hague and the application deadline is January 15, 2024. More information on the posting can be found [here](#).

Member News

ICTIG Members File Amicus Curiae Brief to the IACHR on Colombia and Chile's Request for an Advisory Opinion on the Climate Emergency and Human Rights

On November 23, 2023, UN Special Rapporteur on Toxics & Human Rights Marcos Orellana, UN Special Rapporteur on Human Rights & the Environment David Boyd, and UN Special Rapporteur on the Right to Development Surya Deva, submitted an *amicus curiae* brief to the Inter-American Court of Human Rights in the matter of the Request for an Advisory Opinion on the Climate Emergency and Human Rights from the Republic of Colombia and the Republic of Chile.

The UN Special Rapporteurs' brief responds to the questions presented by the Request for an Advisory Opinion, focusing on State obligations to respect, protect, and fulfill the human rights of individuals and communities potentially affected by climate change as States prevent, mitigate, adapt to, and remedy the effects of the climate emergency.

The amicus brief identifies many ways that the climate emergency is already preventing the full enjoyment of a range of human rights for certain individuals, communities, and populations. The Rapporteurs then describe the applicable governing principles of international law that

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Legal Officer, United Nations Environment Programme (UNEP)

UNEP is currently looking for a legal officer (P3) in Nairobi to join the Montevideo Coordination and Delivery Unit within the Environmental Rule of Law Branch, Law Division. Applications are due on December 25, 2023, and further information can be found [here](#).

Fellowship, Leadership and Advocacy for Women in Africa (LAWA), Georgetown Law

Applications for the LAWA fellowship with Georgetown law based in Washington D.C. are due on January 19, 2024. Further information can be found [here](#). ■



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identify States' obligations in the context of the climate emergency and human rights.

Finally, the Rapporteurs identify the specific measures that States should consider implementing in order to fulfill their human rights obligations in the context of the climate emergency, including addressing loss and damage arising from the climate emergency.

Earlier this year, UN Special Rapporteurs Marcos Orellana and David Boyd, joined by UN Special Rapporteur on Human Rights & Climate Change Ian Fry, also submitted an amicus brief to the International Tribunal for the Law of the Sea in response to the Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law.

The UN Special Rapporteurs are represented in this matter by attorneys from the Vance Center for International Justice and Milbank LLP, including ICTIG member **Liz Brennen** and ASIL member **Viren Mascarenhas**.

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.