

International Courts & Tribunals Interest Group Newsletter

Introductory Note

Summer is no down time for international courts and tribunals. The months since June have witnessed a remarkable amount of activity. The International Court of Justice had rendered its long-awaited advisory opinion on the legal consequences of Israel's policies and practices in the occupied Palestinian territory. That advisory opinion has already generated a considerable volume of commentary, especially on blogs, with much more likely to take place in the next few months.

Just recently, the Court has announced that hearings will open on 2 December 2024 in another advisory case relating to climate change obligations under international law. At the end of July, the International Tribunal for the Law of the Sea made an order on provisional measures in the case concerning the vessel "Zheng He." On 25 June 2024, the Grand Chamber of the European Court of Human Rights found that Russia had violated its obligations under the ECHR by implementing a pattern of persecution of Ukrainians in Crimea since 2014.

At ICTIG, we have also had our own share of activity thanks to our event on reparations in international law. The event was a success and aligned with the interest in the same topic by our Society's journal, AJIL, in which we can expect to see a symposium on reparations in 2025. On 24 September 2024 we will be hosting the first of three events on incidental proceedings, a webinar on provisional measures. We encourage anyone with interest to [register and attend](#).

The autumn appears ripe for new developments, still. Stay tuned!

-Massimo Lando & Vladyslav Lanovoy, Co-Chairs

Developments at International Courts & Tribunals

Council of Europe Administrative Tribunal Adopts Amendments to Procedural Rules

The Administrative Tribunal held its third session of 2024 on 3-4 June. At that session the Tribunal considered, then later adopted, amendments to its Rules of Procedure with the aim of simplifying the procedure for submitting applications to the Tribunal. Further information can be found [here](#).

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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.



New Publications

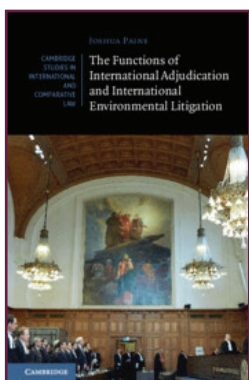
ICTIG members have recently published articles, essays, chapters, books, and blogs, including those listed below.

Articles, Essays & Book Reviews

- Hayley Evans & Mahir Hazim, *Epistemic Injustice at the ICC? An Empirical Analysis of the Use of Third-Party Evidence in the Afghanistan Situation*, 22 J. Int'l Crim. Just. (Advance Article), <https://doi.org/10.1093/jicj/mqad053>.
- Barry Hashimoto, Kevin W. Gray, and Kafumu Kalyalya, *The International Criminal Court and the Justice Cascade*, 24 Int'l Crim. L. Rev. 247 (2024), https://brill.com/view/journals/icla/24/3/article-p247_001.xml.
- Marcelo Kohen & Lorenzo Palestini, *Stability and Finality of Baselines, Outer Limits and Maritime Boundaries in the Context of Anthropogenic Sea-Level Rise*, 11 J. Territorial & Mar. Stud. 71 (2024).
- Joshua Paine, *International Adjudication and the Development of Regulatory Standards: Book Review of Review of Caroline E Foster, Global Regulatory Standards in Environmental and Health Disputes: Regulatory Coherence, Due Regard and Due Diligence* (OUP 2021), 27 J. Int'l Econ. L. 371 (2024), <https://doi.org/10.1093/jiel/jgae012>.

Books & Book Chapters

- Joshua Paine, *THE FUNCTIONS OF INTERNATIONAL ADJUDICATION AND INTERNATIONAL ENVIRONMENTAL LITIGATION* (2024), <https://doi.org/10.1017/9781108655651>.



Abstract: This book uses environmental disputes as a focus to develop a novel comparative analysis of the functions of international adjudication. Paine focuses on three challenges confronting international tribunals: managing change in applicable legal norms or relevant facts, determining the appropriate standard and method of review when scrutinising State conduct for compliance with international obligations, and contributing to wider

processes of dispute settlement. The book compares how tribunals manage these challenges across four key sites of international adjudication: adjudication in the World Trade Organization and under the United Nations Convention on the Law of the Sea, International Court of Justice litigation, and investment treaty

Notable Judgments & Decisions

ICJ issues advisory opinion on Palestine

Massimo Lando, Assistant Professor, University of Hong Kong

On 19 July 2024, the International Court of Justice rendered its much-awaited **advisory opinion** concerning the legal consequences of Israel's policies and practices in the occupied Palestinian territory. This opinion was topical especially because of the ongoing war in Gaza begun on 7 October 2024, after the General Assembly made its advisory request on 30 December 2022 by **Resolution 77/247**. Essentially, the Assembly asked the Court two questions: (i) what were the legal consequences arising from Israel's violation of the Palestinians' right to self-determination, from its occupation, settlement and annexation of Palestinian territory since 1967, and from the adoption of discriminatory measures; (ii) how did Israel's policies and practices affect the legal status of occupation and what were the ensuing legal consequences for States and the United Nations.

The Court found that it had jurisdiction. There might have been a potential stumbling block in the *Eastern Carelia* doctrine, under which the Court may, as a mat-

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arbitration. It shows that while international tribunals perform several key functions in the contemporary international legal order, they are subject to significant constraints. Paine makes a genuine addition to literature on the role of international adjudication in international law which will benefit academics, practitioners, and policymakers.

- Giorgio Sacerdoti, *After Komstroy. Have the EU Member States Withdrawn by the Lisbon Treaty, as an Inter-se Agreement under Article 41 VCLT, Their Consent to ICSID Jurisdiction on ECT Intra-EU Investment Disputes?*, in *ARBITRATION AS BALANCED ADMINISTRATION OF JUSTICE: ESSAYS IN HONOR OF PIERO BERNARDINI* 371 (Massimo Benedettelli et al. eds., 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4897746.
- Giorgio Sacerdoti and Carlo de Stefano, *The Award on Jurisdiction and the Merit*, in *THE AWARD IN INTERNATIONAL INVESTMENT ARBITRATION* 19 (Katia Fach Gomez and Catherine Titi eds., 2024).



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ter of discretion, decline to render an opinion touching on the main point of a pending dispute between States, one of which has not consented to binding third-party settlement. The Court found that no compelling reasons prevented it from rendering the opinion and considered the merits of the Assembly's questions.

The Court's main substantive findings were that Israel's settlement policy in the West Bank and East Jerusalem breached international law, as did its annexation of Palestinian territory. The Court held that Israel's discriminatory policies breached its obligations under the [International Convention for the Elimination of All Forms of Racial Discrimination](#) (CERD) and that its policies as a whole breached the Palestinian's right to self-determination. Israel's continued presence in the Palestinian territory was found to be unlawful. States and the United Nations thus had an obligation not to recognise the state of fact arising from it and not to aid or cooperate in its maintenance. One can only hope that this opinion will somehow contribute to solving this conflict.

[Editor's note: The Court's fourteen separate opinions and declarations can be accessed [here](#).]

Kosovo Specialist Chambers Convicts Pjetër Shala

Sara L. Ochs, Elon University School of Law

On July 16, 2024, Trial Panel I of the Kosovo Specialist Chambers (KSC) issued a judgment in the case of *Specialist Prosecutor v. Pjetër Shala*, convicting the defendant of various war crimes and sentencing him to 18 years imprisonment. Shala was a member of the Kosovo Liberation Army (KLA) during the conflict in Kosovo between the KLA and the Republic of Serbia. During the conflict, Shala was present at a KLA base in a former factory in Albania, where the KLA detained and interrogated non-combatants, primarily of Kosovar Albanian ethnicity, who were suspected of collaborating with Serbia. Given Shala's conduct at the base, the Specialist Prosecutor [charged](#) him with the war crimes of participating and enforcing arbitrary detention, participating in acts of cruel treatment and torture, failing to take adequate measures to ensure the humane treatment of detainees, and aiding and abetting others in committing these crimes.

Following the trial, which involved the testimony of 22 witnesses and lasted 44 days, Trial Panel I concluded that the evidence presented was sufficient to find Shala guilty of the war crimes of arbitrary detention, torture, and murder, due to his contributions to a joint criminal enterprise, notably one composed of other KLA members. The Panel recognized that such contributions included Shala's physical presence at the base on numerous occasions, his participation in the transfer of at least one detainee to the base, and his involvement in the interrogation and brutal mistreatment of several detainees, including one who ultimately died. The panel further determined Shala's lack of an official rank or position in the KLA did not preclude a finding of criminal responsibility. However, the Panel acquitted Shala of the war crime of cruel treatment.

This is the second judgment issued by the KSC regarding war crimes. Trial Panel I also noted its intent to issue a Reparation Order against Shala, to come in due course.

Broadening Gender-Based Asylum Claims: *K and L v. Staatssecretaris van Justitie en Veiligheid*

Cindy Buys, Southern Illinois University, Simmons Law School

In June 2024, the European Court of Justice (ECJ) [interpreted](#) "particular social group" (PSG) in the refugee definition expansively to apply to young women who became "westernized" while in Europe and who feared persecution if returned to Iraq.

K and L are two Iraqi sisters who arrived in the Netherlands as minors and who later filed asylum applications based on their fear of persecution in Iraq due to their membership in a PSG. They claimed due to their long stay in the Netherlands during their formative years, they had adopted the norms, values and conduct of their peers and became "westernized," including the belief that they should make their own choices about many aspects of their lives. These beliefs had become so fundamental to their identity and conscience they could not renounce them.

The District Court, The Hague referred the matter to the ECJ for interpretation of EU law, particularly [Directive 2011/95/EU](#). In the referral, the District Court noted case law in the Netherlands holding that "westernized women" constitute

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too diverse a group to be regarded as members of a PSG.

The ECJ confirmed the concept of “westernization” refers to equality between women and men and that being female is an innate characteristic for PSG purposes. The ECJ opined that a genuine belief in equality between men and women can be so fundamental to one’s identity or conscience that one should not be forced to renounce it. The ECJ reaffirmed that females may be perceived as different from surrounding society because of social, moral or legal norms in their country. The ECJ concluded that, depending on circumstances, females who share as a common characteristic the formation, during their stay in a Member State, of a genuine belief in equality between women and men may be regarded as belonging to a PSG within the meaning of Directive 2011/95. The ECJ returned the case to the District Court, The Hague to apply this interpretation.

ICC Renders Judgment in the *Al Hassan Case*

Julia Sherman, Three Crowns LLP

On 26 June 2024, a trial chamber of the International Criminal Court rendered its judgment in the case of *The Prosecutor v Al Hassan Ag Abdoul Aziz*. The case arises out of the ICC Prosecutor’s investigation into alleged war crimes committed in the Republic of Mali since January 2012 by various armed groups.

Al Hassan was alleged by the ICC Prosecutor to have committed various war crimes and crimes against humanity in Timbuktu between April 2012 and January 2013. During this period, Al Hassan was a member of Ansar Dine, an armed group associated with Al Qaeda in Islamic Maghreb that was seeking to violently impose its religious ideology on the local population as part of an armed struggle in northern Mali. More specifically, Al Hassan was alleged to have committed various war crimes and crimes against humanity through his role as a senior member of Ansar Dine’s Islamic Police and involvement in the Islamic court of Timbuktu, both of which were established by Ansar Dine to enforce its religious ideology.

Ultimately, a majority of the trial chamber convicted Al Hassan of directly committing, contributing to or aiding and abetting the commission of the crimes against humanity of torture and war crimes of torture and outrages upon personal dignity through his role as a senior

member of the Islamic Police. He was also convicted of contributing to the crimes of other members of Ansar Dine in relation to the crimes against humanity of persecution and other inhumane acts, and the war crimes of mutilation, cruel treatment and passing sentences without previous judgment pronounced by a regularly constituted court and affording all judicial guarantees which are generally recognized as indispensable.

The trial chamber also found that certain crimes of sexual violence had taken place in Timbuktu while Ansar Dine was in control of the area. However, the trial chamber found that Al Hassan did not have criminal responsibility for these crimes. Accordingly, he was acquitted of the war crimes of rape and sexual slavery, and the crimes against humanity of rape, sexual slavery and other inhumane acts in the form of forced marriage. He was also acquitted of the war crimes of attacking protected objects.

Al Hassan’s conviction, for which he is now awaiting sentencing, marks the second conviction secured by the ICC Prosecutor in relation to the situation in Mali.

Inter-American Court of Human Rights Opines on Rights During Pregnancy

Lucía Solano, Legal Adviser at the Permanent Mission of Colombia to the United Nations in New York

In an opinion dated July 4, 2024, in the case of *Lovely Lamour v. Haiti*, the Inter-American Court of Human Rights issued provisional measures to protect the life, personal integrity, and health of Lovely Lamour. The case arose from the dire situation Lamour faced during her detention in Haiti, where she was denied appropriate medical care despite being pregnant and later postpartum. The Court found that Haiti had not complied with prior precautionary measures issued by the Inter-American Commission on Human Rights, which had called for urgent medical attention and better detention conditions for Lamour. After her release from detention, Lamour’s health continued to deteriorate, and she faced homelessness and threats, further exacerbating her vulnerability. The Court determined that Haiti’s actions and omissions violated Articles 4, 5, and 26 of the American Convention on Human Rights. As a result, in accordance with articles 63.2 of the Convention, articles 24.2 of the Statute of the Court, and articles

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27 and 31 of the Rules of the Court, the Court ordered Haiti to provide urgent medical and psychological care to Lovely Lamour, with a gender-sensitive approach, to ensure the protection of her life, personal integrity, and health, including her reproductive and mental health; implement protective measures to ensure her safety, particularly considering her current vulnerable situation and precarious living conditions; and report on the actions taken to protect Lamour's rights to life, personal integrity, and health, with continued updates on these measures. The Court's decision highlights the severe human rights challenges in Haiti and calls for international cooperation to address the ongoing humanitarian crisis, especially given the context of extreme, urgent risk of irreparable harm to Lamour's rights.

Inter-American Court of Human Rights Extends Provisional Measures Rendered During Suppression of Political Dissent

Lucía Solano, Legal Adviser at the Permanent Mission of Colombia to the United Nations in New York

In the case of *Juan Sebastián Chamorro et al. v. Nicaragua*, the Inter-American Court of Human Rights issued an extension of provisional measures on July 2, 2024, following a request by the Inter-American Commission on Human Rights to protect the rights of 25 individuals detained in Nicaragua under dire conditions. These individuals, arrested between 2021 and 2024 during the Nicaraguan government's intensified suppression of political dissent, are held in deplorable conditions across three major detention facilities: the Santos Bárcenas Centeno Penitentiary in León, the Jorge Navarro Prison Complex "La Modelo," and the Comprehensive Women's Penitentiary Facility "La Esperanza" in Tipitapa. The detainees, including journalists, activists, and community leaders, suffer from severe health deterioration due to a lack of adequate medical care, physical violence, and harassment by state officials, compounded by isolation from their families and legal representatives. The Court found Nicaragua in violation of Articles 4, 5, 7, and 25 of the American Convention on Human Rights, noting that their arrests were politically motivated and devoid of due process. Consequently, in accordance with Articles 63.2 of the Convention and Articles 27 and 31 of the Rules of the Court; the Court ordered Nicaragua to immediately protect the detainees'

lives, integrity, health, and liberty; release them due to the inhumane conditions of their detention; implement protective measures for the family members of the detainees to prevent retaliation; and report on the measures taken to comply with these orders.

European Court of Human Rights Rules for Ukraine in Human Rights Case Against Russia

Farah El Barnachawy, PhD Candidate, Paris I Pan- théon-Sorbonne

On 25 June 2024, the ECtHR rendered its **judgment** in the case brought by Ukraine against Russia. The Grand Chamber found it had jurisdiction for events that had taken place before 16 September 2022, marking the date Russia ceased to be a State Party to the European Convention. While the Court stated that the issue of just satisfaction was not ready for decision, it held that Russia was to take measures to ensure the return of the relevant prisoners transferred from Crimea to Russian territory. In this unanimous judgment, the Grand Chamber found that the numerous and interconnected violations amounted to a 'repetition of acts':

- Article 6 (right to a fair trial) and articles 5 and 7 (no punishment without law): The courts in Crimea, after the Accession Treaty, were not established by law within the meaning of the Convention.
- Article 8 (right to respect for private and family life): The obstacles imposed in Crimea to opt out of Russian citizenship, as well as the forcible transfer of population and detainees violated the Convention.
- Article 2 (right to life), article 3 (prohibition of inhuman or degrading treatment), and article 5 (right to liberty and security): There are sufficient documented cases of disappearances, ill-treatment, torture, and sexual violence.
- Article 8 (right to respect for the home): There were large-scale raids and searches of private houses, particularly those of Crimean Tatars.
- Article 9 (freedom of religion) and article 2 of Protocol No. 1 (right to education): There was a significant reduction in religious freedom and the number of facilities teaching Ukrainian in Crimea.

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- Article 10 (freedom of expression) and article 11 (freedom of assembly and association): There existed a pattern of suppressing non-Russian media, of prohibiting public gatherings in support of Ukraine, as well as of interrogating, intimidating, and arbitrarily detaining its organizers.
- Article 1 of Protocol No. 1 (protection of property): There was a systemic campaign of large-scale expropriation of property without compensation to civilians and private actors in Crimea.
- Article 2 of Protocol No. 4 (freedom of movement): The establishment of a State border between Russia and Ukraine had not been created in ‘accordance with the law’ as per the Convention.
- Article 14 (prohibition of discrimination) and article 18 (limitation on use of restrictions on rights) in conjunction with articles 5, 6, 8, 9, 10 and 11 and article 2 of Protocol No. 4: The persecution was not random but was directed against pro-Ukrainian activists and Crimean Tatars.
- Article 3 (ill-treatment and investigation): There were multiple and grave violations of mental and physical integrity. ■

Opportunities

Conferences, Webinars & Programs

VIII Congress of the Brazilian Institute for the Law of the Sea

The Brazilian Institute for the Law of the Sea announced a call for submission of papers to be presented at the VIIIth Congress with the theme *Law of the Sea: New Actors, Conflicts, and Technologies*. Drafts are to be submitted by October 1, 2024. More information can be found [here](#).

The Diversification of Civilian Agency in Armed Conflict

The War Studies Research Centre is hosting a conference in Amsterdam on 28th February 2025 on the international legal consequences of the increased use of civilian and corporate actors during conflict. The deadline for abstracts is November 1, 2024 and further information can be found [here](#).

Calls for Papers

Call for Papers: University of Bologna Law Review Volume 10 Issue 1 (2025)

The University of Bologna Law Review is accepting submissions for its upcoming Volume 10 Issue 1 (2025). The deadline for submission is October 29, 2024 and further information can be found [here](#).

Job Postings & Other Opportunities

Judicial Cooperation Officer (P3) at the International Criminal Court

A roster of candidates will be put together for a Judicial Cooperation Officer as part of the judicial cooperation team, charged with administering Office-wide judicial cooperation tracking system, and addressing thematic challenges faced by the Office in its judicial cooperation. The deadline to apply is September 22, 2024 and more information can be found [here](#).



Member News

Jenna Dolecek (Centre for Information Resilience) delivered a presentation entitled *Maptivism: How GIS Takes Down Bad Guys and Preserves Truth* in Saint Louis, Missouri, USA on September 11, 2024. Speaking before the FOSS4GNA (Free and Open Source Software 4 GIS North America) conference, the presentation centered on using open GIS (geospatial, i.e. satellite imagery and maps) data for international human rights and criminal investigations evidence gathering in order to share with investigative mechanisms, international courts, and tribunals.

Professor Emeritus **Marcelo Kohen** (Graduate Institute of International and Development Studies) has been appointed judge *ad hoc* at the International Tribunal for the Law of the Sea by Luxemburg in the “Zheng He” case (Luxemburg v. Mexico) (case N° 33 of ITLOS). After a request for provisional measures by Luxemburg, the Tribunal adopted an order on 27 July 2024, finding that the circumstances, as presented themselves to it, are not such as to require the prescription of provisional measures. Judge *ad hoc* Kohen appended a *dissenting opinion*.

Professor Emeritus **Giorgio Sacerdoti** (Bocconi University) has been appointed to the Italian National Group of the Permanent Court of Arbitration.

ICTIG newsletter editors **Farah El Barnachawy**, **Craig Gaver**, and **Isaac Webb** hosted a webinar for other ASIL IG chairs and editors on best practices for Interest Group newsletters. A second session will be held on Friday 27 September. Email the editors at ictignewsletter@gmail.com if you are interested in attending.

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.