

International Courts & Tribunals Interest Group Newsletter

Introductory Note

As always, it is a pleasure to briefly introduce the quarterly ICTIG newsletter. The past three months have seen a flurry of activity in international courts and tribunals. Most notably, the International Court of Justice has been swamped with requests for provisional measures. In addition to the request in the Mexican Embassy case, which ended up with no provisional measure being indicated, the Court has received repeat requests from South Africa in the case against Israel under the Genocide Convention, connected with the military operations in the Gaza Strip. This increased activity should prompt us to reflect on the role and use of provisional measures in international dispute settlement, which we at ICTIG will do in a forthcoming event after the summer, with details to be released in due course.

Beyond the ICJ, notable is the advisory opinion rendered by the International Tribunal for the Law of the Sea concerning climate change obligations under UNCLOS. This advisory opinion precedes two other ones, expected later this year, from the ICJ and the Inter-American Court of Human Rights. This is just a snapshot of some recent developments in international courts and tribunals.

ICTIG will also be hosting an event on inter-state reparations before international courts and tribunals on 11 July 2024 (for further information, please visit the ICTIG homepage). Until then, we encourage you all to delve into the newsletter for more about recent decisions, forthcoming events at ICTIG and ASIL at large, and more. It remains for us only to thank our newsletter editors, Farah, Craig and Isaac, for putting this issue together with the usual care and professionalism.

-Massimo Lando & Vladyslav Lanovoy, Co-Chairs

Developments at International Courts & Tribunals

African Union Administrative Tribunal Swears in New Members

The African Union Administrative Tribunal (AUAT) swore in three new Members to serve four-year terms. The AUAT is an independent body entrusted with providing an internal justice mechanism for African Union staff members. The new members—Issoufou Boureima of Niger, Mwamaka K. Ogbonnaya of Nigeria, and Angelique Habyarimana of Rwanda—were designated by their respective Member States following the appointment decision taken by the Executive Council. More information about the AUAT and the appointments 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.



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New Composition of the Council of Europe Administrative Tribunal

As of 1 April 2024, the Council of Europe Administrative Tribunal is comprised of the following judges: Paul Lemmens (Belgium) as Chair; Linos-Alexandre Sicilianos (Greece) as Deputy Chair; Lenia Samuel (Cyprus) and Thomas Laker (Germany) as Judges; and Veronika Rita Guba (Hungary) and Yves Gounin (France) as Deputy Judges. The term for each will last until 31 March 2028. For further information, see [here](#).

Martina Polasek Elected Next ICSID Secretary General

On 30 April 2024, the ICSID Administrative Council elected Martina Polasek to serve as the next ICSID Secretary General. Her term will begin on 1 July. She will replace Meg Kinnear, who has served as ICSID Secretary General since 2009. Polasek will be elevated from her current role as Deputy Secretary General of ICSID, a position she has served in since 2016. For further information about Polasek's election, see [here](#).

ICC Chief Prosecutor Applies for Arrest Warrants in Situation in State of Palestine

On 20 May 2024, ICC Chief Prosecutor Karim Khan announced that he had applied for arrest warrants for three Hamas leaders (Yahya Sinwar, leader of Hamas in the Gaza Strip; commander-in-chief of Hamas' military wing Mohammed Deif; and Ismail Hainyeh, head of Hamas' political bureau) and two Israeli officials (Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant) for war crimes and crimes against humanity arising out of its Situation in the State of Palestine investigation. The Prosecutor's announcement can be read [here](#).

Palestine Seeks to Intervene in *South Africa v. Israel*

On 31 May 2024, Palestine joined Colombia, Libya, Nicaragua, and Mexico, in [seeking to intervene](#) in the proceedings in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* under Articles 62 and 63 of the Statute of the Court. Notably, only "states" are permitted to intervene pursuant to Articles

62 and 63, meaning the Court may address the question of Palestinian statehood in its decision about whether to permit Palestine to intervene. Palestine asserts that every state party to the Genocide Convention has an interest in compliance with the Convention, and therefore it has an "interest of a legal nature which may be affected by the decision in the case" under Article 62. Palestine further notes that it seeks to intervene with respect to the construction of Articles I, II, III, IV, V, VI and IX of the Genocide Convention under Article 63.

Israeli ad hoc Judge Barak Steps Down from Role in *South Africa v. Israel* Case

Former Israeli Supreme Court president Aharon Barak resigned on 4 June 2024 from his role as Israel's party-appointed judge to the ICJ panel hearing South Africa's case against Israel under the Genocide Convention. Israel had appointed Barak pursuant to Article 31 of the ICJ Statute. Barak cited personal reasons for his resignation. ■

New Publications

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

Articles, Essays & Book Reviews

- Randle DeFalco, "Reassessing the Rule of Law Legacy of the Khmer Rouge Tribunal", 45 U. Pa. J. Int'l L. 549 (2024), <https://scholarship.law.upenn.edu/jil/vol45/iss3/1/>.
- Md. Rizwanul Islam and Nafiz Ahemd, 'Academic Responsibility, Selectivity, and Crime of Aggression' (2023) 33(1) S. Cal. Interdisc. L.J. 39-56, <https://gould.usc.edu/why/students/orgs/ilj/assets/docs/33-1-islam.pdf>.
- Justin Loveland, 'International court-driven transitional justice in Myanmar' (2023) 4 Indones. J. Int'l & Comp. Law, 361-395.
- Iryna Rekrut, "Environmental Damage is a War Crime: Analyzing the Legal Implications of the Russian Armed Invasion's Environmental Impact on Ukraine" 114 J. Crim. L. & Criminology Online 30, https://scholarlycommons.law.northwestern.edu/jclc_online/30.

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Notable Judgments & Decisions

ICJ does not indicate provisional measures in *Nicaragua v. Germany*

Vladyslav Lanovoy, Assistant Professor, Université Laval

On March 1, Nicaragua instituted proceedings at the ICJ against Germany concerning alleged violations of certain international obligations in respect of the Occupied Palestinian Territory. Nicaragua sought to found the jurisdiction of the Court on the optional clause declarations and the compromissory clause in Art. IX of the Genocide Convention. Nicaragua also requested that the Court indicate provisional measures.

In its *Order of April 30*, the Court decided that the circumstances did not warrant the indication of provisional measures. In support of its conclusion, the Court drew on the German legal framework governing the export of weapons and other military equipment, a significant decrease since November 2023 in the value of materials for which

the licenses were granted, and Germany's statement that 98 per cent of the licenses granted since 7 October 2023 concerned "other military equipment" and not "war weapons." The Court also noted that even though Germany had decided to suspend its contribution to the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in respect of operations in Gaza, such contributions are voluntary, and in any case Germany has otherwise supported initiatives aimed at funding the agency's work. While it did not indicate any provisional measures, the Court recalled that all States are under an obligation to "respect and ensure respect" for the Geneva Conventions "in all circumstances" (Article I of the Geneva Conventions), an obligation to prevent the commission of genocide (Article I of the Genocide Convention), and obligations under the relevant arms control treaties not to transfer arms where these might be used in violation of the above-mentioned conventions.

ICJ Indicates Provisional Measures in *South Africa v. Israel*

Vladyslav Lanovoy, Assistant Professor, Université Laval

On 29 December 2023, South Africa instituted proceedings at the ICJ against Israel concerning alleged violations in the Gaza Strip of its obligations under the Genocide Convention. South Africa also requested that the Court indicate provisional measures. The Court has since delivered three orders indicating provisional measures.

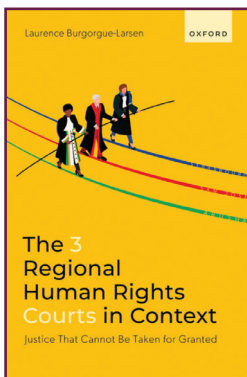
On 26 January 2024, after having found that the material conditions for the indication of provisional measures were met, the Court ordered Israel to "take all measures within its power to prevent the commission of all acts within the scope of Article II" of the Genocide Convention, in relation to the Palestinians of Gaza, and to "ensure with immediate effect that its military does not commit any [such] acts." The Court further ordered that Israel "shall take all measures within its power to prevent and punish the direct and public incitement to commit genocide in relation to members of the Palestinian group in the Gaza Strip." Finally, the Court ordered Israel to enable effective humanitarian assistance and relief, to ensure the preservation of evidence, and to report to the Court on the implementing measures.

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Books & Book Chapters

- Laurence Burgorgue-Larsen, *The 3 Regional Human Rights Courts in Context*, Oxford University Press, (2024).



Abstract: At specific moments in the history of Africa, Europe, and Latin America, each region decided to create supranational jurisdictions to protect human rights. These are, in chronological order, the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court on Human and Peoples' Rights. While each has been the subject of important, dedicated monographs, no major study has analyzed both the institutional and jurisprudential issues of all three

regional systems. The 3 Regional Human Rights Courts in Context is the first book to offer a comprehensive comparison of the three systems. Rather than merely juxtaposing analogous features, the book considers how the three courts operate as parts of a greater, integrated whole. Similarities and differences between the courts are illuminated alongside historical, political, and sociological insights, in addition to the book's primary legal focus. ■



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By its *Order of March 28*, the Court reaffirmed its earlier provisional measures and indicated further provisional measures “in view of the worsening conditions of life faced by Palestinians in Gaza, in particular the spread of famine and starvation.” In particular, the Court ordered Israel to “take all necessary and effective measures to ensure, without delay, in full co-operation with the United Nations, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance.” The Court also ordered that Israel shall “ensure with immediate effect that its military does not commit acts which constitute a violation of any of the rights of the Palestinians in Gaza as a protected group under the Convention on the Prevention and Punishment of the Crime of Genocide, including by preventing, through any action, the delivery of urgently needed humanitarian assistance.”

Finally, in its most recent *Order of May 24*, the Court acceded to South Africa’s request for the modification of provisional measures “in view of the worsening conditions of life faced by civilians in the Rafah Governorate. Notably, the Court ordered that Israel shall “[i]mmediately halt its military offensive, and any other action in the Rafah Governorate, which may inflict on the Palestinian group in Gaza conditions of life that could bring about its physical destruction in whole or in part.” The Court also ordered that Israel shall “[t]ake effective measures to ensure the unimpeded access to the Gaza Strip of any commission of inquiry, fact-finding mission or other investigative body mandated by competent organs of the United Nations to investigate allegations of genocide.”

ICJ Does Not Order Provisional Measures in Embassy of Mexico in Quito (*Mexico v. Ecuador*)

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

In its *order of 23 May 2024*, the ICJ unanimously held that the circumstances did not warrant the exercise of its powers under Article 41 of the Statute to indicate provisional measures. The order was issued following the entry of Ecuadorian security forces into the Mexican Embassy in Quito without authorization from the Head of Mission, restraint of the Deputy Chief of Mission and the forcible removal of Mr Jorge David Glas Espinel, former Vice-President of Ecuador, from the premises.

The Court considered that the various assurances made by the Agent of Ecuador on behalf of his Government to respect the Vienna Convention on Diplomatic Relations (VCDR) by protecting and securing the premises, property, and archives; by allowing Mexico to clear the premises of both its diplomatic mission and private residences; and by refraining from any action to aggravate the dispute, addressed the concerns Mexico raised in its Request.

The Court recalled that the Agent’s assertions amount to public unilateral declarations that create legally binding obligations on the Respondent that must be respected and complied with in good faith. As such, the Court considered that there was no urgency, with there being no real and imminent risk of irreparable prejudice to the rights claimed by Mexico. Nevertheless, the Court did emphasize the fundamental importance of the principles enshrined in the VCDR.

ECtHR Issues Landmark Climate Change Ruling

Prof. Dr. Stefan Kirchner, MJI; Government Advisor, Frankfurt RheinMain Region, Germany

On 9 April 2024, the European Court of Human Rights (ECtHR) issued three decisions in cases relating to the impact of climate change on human rights: *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (application no. 53600/20), *Carême v. France* (application no. 7189/21) and *Duarte Agostinho and Others v. Portugal and 32 Others* (application no. 39371/20).

The chambers that had been allocated these cases handed them over to the Grand Chamber and the cases were given priority under Article 42 of the European Convention on Human Rights (ECHR). The decisions issued by the ECtHR were greatly anticipated, in particular *Duarte Agostinho*, a case that had gained substantial public attention as the young applicants had initiated proceedings against no fewer than 33 states.

That application, however, was deemed inadmissible with regard to Portugal because the applicants had failed to exhaust all domestic remedies as required under Article 35 (1) ECHR. While there have been a tiny number of cases in which this requirement had been waived, the high risk litigation strategy failed in this case. Against the 32 other

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states, the ECtHR held the application inadmissible as well because the applicants could not prove that they fell under the jurisdiction (within the meaning of Article 1 ECHR) of these other states, except Portugal. While the applicants had suggested an interest-based extension of the concept of jurisdiction, this suggestion was rejected by the ECtHR which maintained its longstanding view that jurisdiction means primarily territorial jurisdiction and which held that the applicants had not proven that jurisdiction should apply extraterritorially.

The application in *Carême* was inadmissible, as the applicant no longer resided in France and did not prove the victim status required by Article 34 ECHR (the ECHR does not allow claims to be brought *actio popularis*).

For the same reason, the applications of four individual applicants (the “Others” in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*) were rejected as inadmissible. Most importantly, though, the ECtHR sided with one applicant, a non-governmental organization (NGO) of senior women, in the *KlimaSeniorinnen* case. This aspect is particularly relevant from a procedural point of view as the Court allows associations to bring cases on behalf of their members, even though not all members of the association may qualify as victims of a violation of the ECHR in the aforementioned sense. This right of associations, however, is not unlimited. In fact, in the *KlimaSeniorinnen* judgment, the ECtHR created a special kind of access to court for NGOs that work on the intersection of climate change and human rights. This is explained by the very nature of the problem of climate change. Climate change concerns everybody, including future generations. The intergenerational aspect of human rights in the context of climate change has earlier been highlighted by Germany’s Federal Constitutional Court in 2021 and by the Supreme Court of the Netherlands in 2019. On this basis, the ECtHR developed a test to determine whether an NGO could have standing in climate change cases. In order for an association to pass the Court’s test as an applicant, it not only has to be lawfully established but it has to focus on the protection of human rights in the context of climate change. Furthermore, it needs to show that it is actually qualified to act on behalf of its members in the context of climate change and the related human rights issues. The *KlimaSeniorinnen* NGO passed this test.

Substantively, the ECtHR found violations of the right to private life (Article 8 ECHR) and the right to a fair trial (Article 6 ECHR). The right to private life under the ECHR is rather far-reaching but by no means a catch-all clause. The ECtHR found that Article 8 ECHR includes a right of individuals (in this case, claimed by a qualified NGO) to be protected against effects of climate change. This ruling follows decades of ECtHR case law on the right to a healthy environment under the header of the same right to private life. In the *KlimaSeniorinnen* case, the ECtHR found that Switzerland had not honored its obligation to take positive action to protect human rights and that, as a result, Switzerland’s failure to take more effective action to mitigate the effects of climate change (which could include also legislation and other measures to limit climate change in the first place) had led to a violation of the right to private life under Article 8 ECHR by omission. In this respect, the judgment has the potential to inspire a wide range of future applications concerning positive obligations of the state, in particular in situations in which human health is at stake. In addition, the Court found that the NGO’s right to access to court, as one aspect of the right to fair trial under Article 6 ECHR, had been violated because the applicant NGO’s complaints had been rejected on the basis of existing Swiss laws that the Court deemed to be insufficient to adequately address the global challenge that is posed by climate change.

All states that are parties to the ECHR have to implement the Convention as interpreted by the ECtHR. As a result of the *KlimaSeniorinnen* judgment, states that are parties to the ECHR will have to ensure that they take truly effective action, including through the creation and enforcement of appropriate legislation, that adequately reduces the impacts of climate change on human rights.

ECtHR Issues Judgment on the Arrest Of an International Judge by Türkiye

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

On 23 April 2024, the ECtHR ruled in *Aydin Sefa Akay v. Türkiye* that Türkiye had violated Articles 5§1 and 8 of the ECHR with respect to its arrest of an international judge. The applicant, a judge serving at the UN International

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Residual Mechanism for Criminal Tribunals and enjoying diplomatic immunity, was working remotely from his home country, Türkiye. He was arrested in 2016 following the attempted coup in Türkiye and tried as part of a criminal investigation against Ministry of Foreign Affairs employees suspected of being involved in an armed terrorist organization. At issue was whether the arrest, pre-trial detention, search and seizure of the applicant and his home, were in “accordance with a procedure prescribed by law” under Article 5§1 and 5§4 of the ECHR’s prohibitions on deprivation of liberty, and in conformity the right to private and family life enshrined in Article 8.

The ECtHR first considered the claims touching on deprivation of liberty as per Article 5 of the ECHR. It reiterated its narrow interpretation of the exhaustive list of permissible grounds contained in Article 5§1 justifying deprivations of liberty. Its lawfulness is determined by reference to national law and international law, where applicable. While the Court may only apply the ECHR and does not have the competence to decide on the applicant’s immunity, it must ensure that the domestic courts’ approach is in line with Article 5§1. The Court emphasized the importance of judicial independence and applied its case-law relating to the independence of domestic judiciaries to international judges and courts. In light of various factual considerations, the Court found that Türkiye’s domestic courts violated Article 5§1.

Turning to Article 8, with respect to searches and seizures undertaken by Turkish domestic authorities at the applicant’s house, the Court analyzed whether this interference with the applicant’s right of private life and home was justified. Considering that Mechanism judges may exercise their functions remotely, the applicant’s place of residence was deemed to be in an analogous position to that of an office and hence was subject to heightened protection. Thus, the search and seizure by the respondent was not justified.

The Court ultimately found violations of articles 5§1 and 8 of the ECHR and ordered the respondent State to pay non-pecuniary damages as well as costs and expenses to the applicant. In his concurring opinion, Judge Krenč, joined by Judge Schembri Orland, highlighted the novelty of the case, as it dealt with an international judge’s independence, including from their State of nationality or residence, while working remotely, and the role of immunity to that end.

InterAmerican Court of Human Rights (IACHR) Orders Peru to Adopt Comprehensive Reparation Measures

Lucía Solano

In a Judgment issued on 27 November 2023 and published in March 2024 in the *Case of La Oroya Population v. Peru*, the IACHR found the State of Peru internationally responsible for human rights violations against 80 inhabitants of La Oroya. These violations were the result of air, water, and soil pollution caused by the mining and metallurgical activities at the La Oroya Metallurgical Complex and the State’s failure to regulate and oversee its activities. This led the Court to conclude that Peru’s actions and omissions violated the victims’ rights to a healthy environment, health, life, and personal integrity. Additionally, the Court concluded that the State failed to fulfill its progressive development obligation concerning the right to a healthy environment due to the regressive modification of air quality standards. Furthermore, the Court found the State responsible for violating children’s rights; for not ensuring the public participation of the victims; for failing to carry out investigations regarding alleged acts of harassment, threats, and reprisals, and for violating the right to judicial protection. Therefore, the Court concluded that Peru is responsible for violating Articles 26, 5, 4.1, 8.1, 13, 19, 23, and 25 of the American Convention, in relation to Articles 1.1 and 2 of the same instrument. Due to these violations, the Court ordered various measures of reparation, including: investigating the facts to identify, judge, and, if applicable, sanction those responsible for acts of harassment against environmental defenders; implementing a remediation plan for environmental damage; providing free medical care to the victims of violations of their rights; adapting guarantees of non-repetition. It also awarded compensatory damages.

ITLOS issues Advisory Opinion on Climate Change

Massimo Lando, Assistant Professor, University of Hong Kong

On 22 May 2024, the International Tribunal for the Law of the Sea (“ITLOS”) handed down its long-awaited advisory

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opinion on climate change. The opinion was requested by the Commission of Small Island States on Climate Change and International Law (“COSIS”). In its request, COSIS sought to elucidate the climate change-related obligations of States and other entities under the United Nations Convention on the Law of the Sea (“UNCLOS”). In its opinion, ITLOS confirmed that it had advisory jurisdiction based on its Statute and found that there were no reasons not to render the opinion requested. The Tribunal also found that the applicable law encompassed not only UNCLOS itself, which was the focus of the opinion, but also external sources, such as the United Nations Framework Convention on Climate Change and the 2015 Paris Agreement.

On the substance, and perhaps unsurprisingly, ITLOS found that UNCLOS imposes on States numerous obligations in relation to climate change. It located such obligations primarily in Part XII of UNCLOS, which concerns specifically marine environmental protection, but also cropped up in Parts V and VII, respectively governing Exclusive Economic Zones and the high seas.

The longest part of the advisory opinion concerns the Tribunal’s discussion of the two central provisions governing marine environmental protection, which are Articles 192 and 194 of UNCLOS. That discussion did not seem to add much to the text of those (and other) provisions. Perhaps the most significant statement by the Tribunal was that obligations under Articles 192 and 194 were obligations of conduct, not of result, and that compliance with them had to be assessed against a stringent standard of due diligence. The Tribunal took time to emphasize that States’ compliance with the relevant obligations depends on their capabilities, thus recognizing the distinction that UNCLOS seeks to make between developed and developing States. Overall, the advisory opinion did not drop any bombshells in terms of its substance. However, it is significant as the first advisory opinion on climate change. How significant will depend on States’ reactions to it, and indeed their willingness to implement the advice given by ITLOS.

CJEU Condemns UK Supreme Court’s Enforcement of ICSID Arbitral Award

In the latest chapter of the nearly 20-year legal saga between the Micula brothers and Romania, the Court of Justice of the European Union (CJEU) held in the case of

Commission v. United Kingdom (Case C-516/22) that the UK failed to fulfill its obligations under the EU treaties when its Supreme Court ordered enforcement of an ICSID arbitral award against Romania.

The saga began in 2005, when Romania repealed certain tax incentives as part of its process of accession to the EU. The Micula brothers—Swedish investors in Romania—initiated arbitration proceedings under the ICSID Convention and the Sweden-Romania bilateral investment treaty. An ICSID arbitral tribunal found that by repealing the incentives Romania had breached the investors’ legitimate expectations at the time of investment, and ordered Romania to pay the investors € 178 million in damages. However, the European Commission later found that payment of the arbitral award would constitute unlawful State aid under EU law, and ordered Romania to cease making payments.

The investors attempted to enforce the award in several countries, including the UK. In a February 2020 decision (before the end of the Brexit transition period), the UK Supreme Court lifted a stay of enforcement of the award, notwithstanding EU law. The Supreme Court relied on Article 351 of the Treaty on the Functioning of the EU (“TFEU”), which states that the EU treaties do not apply to “rights and obligations concluded . . . for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other.” The court held that because the ICSID Convention was concluded before the UK joined the EU, and because the UK owes a duty to all contracting States under the ICSID Convention to enforce arbitral awards, EU law did not prevent it from lifting the stay.

The CJEU disagreed, finding that the UK’s ICSID Convention obligation to enforce the arbitral award was owed only to Sweden (the investors’ home State), and because Sweden is an EU Member State, Article 351 TFEU did not apply. The CJEU added that if Article 351 was interpreted as allowing EU Member States to enforce intra-EU arbitral awards, EU States could “be in a position to remove disputes concerning EU law from the judicial system of the European Union by entrusting them to the arbitral tribunals established under” the ICSID Convention. The CJEU noted that this would run contrary to its decision in *Achmea*, where it held that arbitration clauses in investment treaties between EU Member States were contrary to EU law.

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The CJEU's decision underscores the court's antipathy toward intra-EU investment treaty arbitration and fortifies its decision in *Achmea*. It will also likely prevent the enforcement of intra-EU arbitral awards by EU Member States going forward.

Council of Europe Administrative Tribunal Rules on Employees Holding Russian Nationality

Craig D. Gaver, Washington DC

On 22 March 2024, the Council of Europe Administrative Tribunal (the "Tribunal") published a pair of Judgments comprising four appeals: *I.S. v. Secretary General*, Appeal No. 742/3034 and *E.T. and Others v. Secretary General*, Appeals Nos. 739/2023, 740/2023, and 741/2023. Each of the appellants had challenged decisions taken on their employment on the basis of their Russian nationality and the Council of Europe's termination of Russia's membership in March 2022.

In *I.S.*, the applicant, a former staff member holding Russian citizenship, had been employed at the Registry of the European Court of Human Rights under consecutive fixed-term contracts from September 2014 to August 2023. The last renewal of the contract was for the period from 1 January 2022 to 31 August 2023. Following the Council's termination of Russia's membership, the Secretary General **shared the approach** she intended to take with respect to staff members with Russian nationality. As concerned fixed-term contracts, she differentiated between individuals with sole Russian nationality and those with dual nationality. *I.S.* was one of the former. Thus, *I.S.* was informed of the non-renewal of the employment contract because *I.S.* no longer fulfilled a fundamental condition for employment with the Council: nationality of a Member State. *I.S.* lodged a formal complaint which the Secretary General dismissed on grounds of admissibility and merits.

This appeal ensued. *I.S.*, as appellant, claimed that the Secretary General lacked a legal basis by refusing to convert the contract into an open-ended one and that *I.S.* was the subject of discrimination on the basis of nationality. The Tribunal, relying on prior case law, affirmed that a staff member under a fixed-term appointment is not entitled to the renewal of their contract (para. 39). The Tribunal also affirmed, again relying on prior decisions, that one

rationale behind fixed-term contracts was to ensure that the employee continued to meet essential criteria, such as nationality here (para. 41). The Tribunal also denied the discrimination claim because the organization did not treat the appellant differently than other staff members or types of contracts, who were not in a comparable situation (para. 43).

The appellants in *E.T. and others* differed from *I.S.* in that each had dual Russian and French citizenship. They also each held long-term, high-ranking positions within the Council. They still maintained the essential criterion of Member State nationality even after Russia was terminated from the Council. Still, "an appropriate level of risk management" (para. 15) led the Secretary General to transfer the appellants to lower-level positions while preserving their grade and level of remuneration. They lodged formal complaints seeking to be placed in positions corresponding to their grade, competences and functions at the same level (A4) rather than the A1/A2/A3 positions to which they had been transferred.

On appeal, the Tribunal found that the Secretary General acted within the bounds of Staff Rules 570.1 and 590.1, which allowed her to temporarily assign the appellants to jobs carrying a lower grade (para. 69). As concerned non-discrimination claims, the Tribunal found objective reasons for the Secretary General to treat the appellants differently within the risk management exercise, as staff members holding Russian citizenship and occupying sensitive jobs. The Tribunal also noted that the risk assessment exercise would continue without being limited to staff members of Russian nationality and would include all senior and middle management jobs, as appropriate (para. 75). The Secretary General's actions pursued a legitimate aim and remained proportionate to the aim pursued, resulting in no breach of equal treatment or non-discrimination principles. The Tribunal likewise found no breach of the duty to provide reasons/right to be heard and the duty of care (paras. 84-86).

Despite the factual differences among the complainants in *I.S. v. Secretary General* and *E.T. and Others v. Secretary General*, they resulted in the same disposition: dismissal. The pair of judgments affirm the wide discretion the Secretary General has in matters of personnel management. ■



Opportunities

Calls for Papers

Singapore Management University's Centre for Commercial Law in Asia is organizing a hybrid workshop addressing the question: How do small States engage with international law and governance to address sustainability challenges in the Arctic? The deadline for the call for abstracts is 15 July 2024, more information can be found [here](#).

The Open University of Catalonia, along with ESIL's Interest Group on International Environmental Law and Interest Group on the European and International Rule of Law, is calling for papers on "The crossroad of international environmental law enforcement: The instrumentalization of other legal regimes and discourses in the era of fragmentation and the Anthropocene." Deadline for submissions is 1 July 2024. Further information can be found [here](#).

The Lawfyer International Journal of Doctrinal Legal Research (Volume 2 Issue 2) invites research papers and articles by 30 July 2024. More information can be found [here](#).

The German Yearbook of International law is opening a call for contributions to the 'General Articles' section of its Volume 67(2024). Submissions are to be sent by 31 August 2024 and further information can be found [here](#).

The Hague Yearbook of International Law (Volume 38) has put out a call for paper proposals regarding its symposium on 'Provisional Measures in International Law'. The deadline is 30 June 2024 and more information is available [here](#).

Job Postings & Other Opportunities

The International Federation for Human Rights is looking for a **Programme Officer** based in Belgium or Paris. The deadline to apply is June 30, 2024.

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.