

International Courts & Tribunals Interest Group Newsletter

Introductory Note

In a preface to a recent volume titled *The Changing Character of International Dispute Settlement: Challenges and Prospects*, the late Judge James Crawford noted that “[f]ew disciplines are so all-encompassing and central to the study and practice of international law as the settlement of international disputes”. Indeed, the current docket of international courts and tribunals is a vibrant laboratory for the study of various substantive areas of international law as well as a range of fascinating points of procedure in international dispute settlement. International courts and tribunals are in the spotlight. They are called to provide answers to some of the most complex legal issues that concern the international community as a whole. To give just one example, over the past two weeks, an unprecedented number of participants, 98 States and 12 international organizations, have presented their oral observations in the advisory proceedings on the *Obligations of States in respect of climate change* before the International Court of Justice.

In recent months, ICTIG has tried to accompany the ever-expanding work and output of international courts and tribunals. For example, it held a fascinating event on inter-State reparations, and launched a series of events on incidental proceedings, including provisional measures, preliminary objections and intervention. Other events in the pipeline include a discussion on the role international claims commissions and on certain complex issues such as that of sovereign immunities of States. As ever, we welcome any ideas that members of ICTIG may have in terms of future events, and we look forward to seeing many of you in person in Washington D.C. at the ASIL Annual Meeting in April 2025. Until then, we wish you all an enjoyable festive season, and a happy new year!

-Massimo Lando & Vladyslav Lanovoy, Co-Chairs

Developments at International Courts & Tribunals

ICJ Holds Public Hearings in Climate Change Advisory Proceeding

The International Court of Justice held public hearings from December 2-13 in *Obligations of States in Respect of Climate Change*, an advisory opinion proceeding referred to the Court by the General Assembly in March 2023. The General Assembly seeks an advisory opinion on two questions: (1) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations; and (2) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused

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significant harm to the climate system and other parts of the environment. A record 98 States and 12 international organizations expressed their intention to participate in the oral proceedings before the Court.

Elias Appointed Judge *ad hoc* of the International Court of Justice

Equatorial Guinea has selected Dr. Taoheed Olufemi Elias, a national of Nigeria, as Judge *ad hoc* in [Request relating to the Return of Property Confiscated in Criminal Proceedings \(Equatorial Guinea v. France\)](#). Pursuant to Article 31(2) of the Statute of the ICJ, “[i]f the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge.” Judge Ronny Abraham, a national of France, currently sits on the Court.

World Bank Administrative Tribunal Welcomes New Members

Martha Halfeld Furtado de Mendonça Schmidt, a Brazilian national, and Thomas Laker, a German national, have joined the World Bank Administrative Tribunal. Judge Halfeld joins the Tribunal after serving as a labor judge in Brazil, on the United Nations Appeals Tribunal, and on the Inter-American Development Bank’s Administrative Tribunal. Judge Laker joins the Tribunal after serving as President and Judge of the United Nations Dispute Tribunal in Geneva and as Presiding Judge at the Administrative Tribunal in Hamburg. Both judges were on the bench for the Tribunal’s session that began on April 29.

New Caribbean Court of Justice Judge Sworn In

On 29 October 2024, the Honourable Mme Justice Chantal Ononaiwu was sworn in as a Judge of the Caribbean Court of Justice, becoming the second Jamaican national to join the Bench of the regional court. Further information can be found [here](#).

ICSID Releases 2024 Annual Report

The International Centre for the Settlement of Investment Disputes released its [2024 Annual Report](#) on 25 October 2024, featuring an in-depth look at the Centre’s activities over the past fiscal year covering 1 July 2023 to 30 June 2024. The report was the final one spearheaded by outgoing Secretary-General, Meg Kinnear, who was succeeded by incoming Secretary-General Martina Polasek on 1 July 2024. Among others, the report highlighted a total of 341 cases administered by the institution in FY2024, as well as 58 newly-registered cases. The report is available [here](#).

European Union Institutes Arbitration against United Kingdom

On 25 October 2024, the European Union served on the United Kingdom a request to establish an arbitration tribunal under Article 739 of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community and the United Kingdom of Great Britain and Northern Ireland concluded on 30 December 2020 (Trade and Cooperation Agreement). The dispute, administered by the Permanent Court of Arbitration, concerns the United Kingdom’s decision to prohibit the fishing of sandeel in the English waters of the North Sea and in all Scottish waters. A tribunal of three was established on 18 November 2024. Further information is available [here](#).

East African Court of Justice Signs MOU to Promote Digitization and Dissemination of EACJ Jurisprudence

The East African Court of Justice signed a Memorandum of Understanding with the African Legal Information Institute (AfricanLII), part of the Faculty of Law at the University of Cape Town, and Laws.Africa NPO, based in Cape Town, on 15 November 2024. The MOU formalizes the collaboration between EACJ, AfricanLII, and Laws.Africa in advancing the digitization and dissemination of EACJ jurisprudence and enhancing accessibility and promoting transparency within the legal community. See [here](#) for more. ■



Notable Judgments & Decisions

ICJ Renders Decisions on Jurisdiction in Dueling Armenia-Azerbaijan CERD Cases

On 12 November 2024, the International Court of Justice (“ICJ”) ruled on preliminary objections in parallel cases brought by Armenia and Azerbaijan against one another under the Convention on the Elimination of All Forms of Racial Discrimination (“CERD”). The 2020 Second Nagorno-Karabakh War and its aftermath, which saw Azerbaijan gain control over the Nagorno-Karabakh region, previously administered by ethnic Armenians, underlies both disputes.

Both countries are parties to CERD, with Armenia joining in 1993 and Azerbaijan following in 1996. This gap informed one of Armenia’s preliminary objections to Azerbaijan’s case, which had sought to capture Armenian conduct in the three-year period preceding Azerbaijan’s own treaty accession. The Court cited the principle of non-retroactivity of treaties to preclude entertaining claims based on such acts, though it held open the prospect of Azerbaijan demonstrating a continuing or composite breach—e.g., ethnic cleansing—in which facts from this earlier period might be indirectly taken into account, as part of assessing subsequent conduct falling within its jurisdiction *ratione temporis*. That certain CERD obligations in dispute are *erga omnes partes* does not, in itself, vest the Court with jurisdiction over them, however.

The ICJ further narrowed Azerbaijan’s case by excising Azerbaijan’s environmental claims, concerning forestry, water, and agricultural practices in areas once predominantly inhabited by ethnic Azerbaijanis. Only Armenia’s final preliminary objection, regarding the placement by ethnic Armenians of landmines and booby traps, did not succeed. The ICJ found that such acts were not presented as violations of CERD in their own right, but rather informed a broader allegation of ethnic cleansing.

The Armenia-initiated case, in contrast, will proceed to the merits largely unscathed. The Court rejected Azerbaijan’s Article 22 objection that Armenia had not genuinely attempted to resolve the dispute; as a matter of substantive jurisdiction, it also allowed Armenia’s allegations of murder, torture, and inhuman treatment of civilians or members of Armenia’s armed forces to advance. Interest-

ingly, in this connection the Court credited Armenia’s allegations of “anti-Armenian sentiment”—that is, a generalized racial animus—as being capable of bringing acts within the substantive scope of CERD. It will remain for Armenia, at the merits stage, to prove that such animus is indeed racial in nature—a challenge common in the Court’s CERD case law (e.g., *Ukraine v. Russia* and *Qatar v. UAE*), in which the question of characterization of particular policies or statements plays an important, often decisive role.

General Court of the EU Upholds European Commission’s Rejection of ICSID Arbitral Award

In a new chapter of the nearly 20-year legal saga between the Micula brothers and Romania, the General Court of the European Union (“General Court” or “Court”) in the case of *European Food and Others v. Commission* (Case T-624/15 RENV) upheld the decision of the European Commission to prevent Romania from paying a €178 million ICSID arbitral award to the Micula brothers.

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 (“BIT”). An ICSID arbitral tribunal found in 2013 that by repealing the incentives Romania had breached the investors’ legitimate expectations at the time of investment, and ordered Romania to pay damages. However, in 2015 the European Commission found that payment of the arbitral award would constitute unlawful State aid under EU law. The Commission ordered Romania to cease making payments and to recover the amounts that it had already paid out.

In the present case, the General Court held that the Commission’s decision did not infringe Article 351 of the Treaty on the Functioning of the European Union (“TFEU”), which states that the rights and obligations concluded between an EU Member State prior to its accession and third countries are not affected by the EU Treaties. According to the Court, the key date for assessing whether Article

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351 is applicable is the date that the right to State aid was granted, which in this case was the date of the arbitral award. Because the arbitral award post-dated Romania's 2007 accession to the EU, "the BIT cannot be regarded as an agreement giving rise, within the meaning of [Article 351], to rights in favour of third countries and obligations on the part of that Member State."

The Court further stated that, because the arbitral tribunal does not form part of the EU judicial system, the arbitral award "cannot therefore produce any effects and cannot thus be executed with a view to paying the compensation granted by that award." Hence, Articles 53 and 54 of the ICSID Convention, under which each party must comply with the terms of arbitral awards and recognize such awards, does not create any obligations on the part of Romania within the scope of Article 351, nor does it create any rights in favor of third States. The Court additionally found that the compensation ordered by the arbitral award was properly characterized as State aid under the TFEU.

The General Court's decision underscores the CJEU's antipathy toward intra-EU investment treaty arbitration and reinforces its jurisprudence prioritizing the EU Treaties over arbitration awards and the ICSID Convention. The decision of 2 October 2024 is available [here](#).

Community Court of Justice of the Economic Community of West African States (ECOWAS) Renders Judgment on Sierra Leone's Loitering Laws

Farah El Barnachawy, PhD

In the case of *Advocaid Ltd v Republic of Sierra Leone*, the ECOWAS Community Court of Justice rendered its judgment on 7 November 2024 on Sierra Leone's loitering laws. The Court found that Sierra Leone's loitering laws violate the rights to non-discrimination, equality, and freedom of movement. As such, the Court directed the respondent to take necessary legislative measures to bring loitering laws in conformity with the African Charter.

The applicant argued that Sierra Leone's laws grant law enforcement agents unfettered discretion to arrest any

person, with a disproportionate impact on poor and marginalized groups in society, while those from middle and upper classes are rarely, if ever, arrested for loitering. The respondent posited that the loitering laws do not violate the African Charter.

In relation to non-discrimination and equality, the Court explained that the nature of the loitering laws appears to target the status of individuals, and arrests would not be undertaken in that regard but for the status of the individual. As such, the application of the laws unavoidably subjects the poor and underprivileged to discrimination and unequal application of the law. In relation to the violation of freedom of movement, the Court found that the restriction on freedom of movement was provided by the law albeit its vague terms rendered it disproportionate and unnecessary. As such, the loitering laws lend themselves to arbitrary applications. Finally, the Court found that the maintenance and continued application of these laws violate the obligation of Member States under the African Charter to bring their laws into conformity with the African Charter. Hence, Sierra Leone was found to have violated the African Charter.

CJEU Clarifies Meaning of "Legitimate Interest" in Article 6(1)(f) of the GDPR

On 4 October 2024, the Court of Justice of the European Union (CJEU) issued a decision in *Koninklijke Nederlandse Lawn Tennisbond (KNLTB) v Autoriteit Persoonsgegevens* (C-261/22), clarifying that commercial interests can be "legitimate interests" within the meaning of Article 6(1)(f) of the European Union's General Data Protection Regulation (GDPR).

The case concerned a decision by the KNLTB, the Royal Dutch Lawn Tennis Association, to sell its members data – including their names, addresses, domiciles, dates of birth, phone numbers, and email addresses – to two of its sponsors, without its members' consent. After members complained, the Dutch data protection authority ruled that the KNLTB had disclosed the members' data without any legitimate basis for doing so. The KNLTB challenged that decision in Dutch district court, which then referred the matter to the CJEU.

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Article 6(1)(f) of the GDPR establishes one of six circumstances in which a controller of data may lawfully process a subject's data: when doing so "is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject..."

Most notably, the court held that a commercial interest – such as the one held by KNLTB in selling its members' data to help finance its operations – can constitute a "legitimate interest" provided that the interest is otherwise legal (though such an interest need not be determined by law). The Court further emphasized that processing must be "necessary" to satisfy any legitimate interest. Recalling its July 2023 decision in *Meta Platforms*, the Court also reiterated that referring courts must consider the "reasonable expectations of the data subject as well as the scale of the processing at issue and its impact on that person" in balancing data holders' fundamental rights and freedoms against companies' commercial interests; the latter, the Court affirmed, cannot override the former.

Notwithstanding its finding that commercial interests constitute legitimate interests under Article 6(1)(f), the Court seemed skeptical that the KNLTB's interests might override its members' fundamental rights and freedoms. In conducting a balancing analysis, the CJEU emphasized that the referring court would need to consider whether the KNLTB's members could have reasonably expected that their data would be sold to the organization's sponsors (a casino and a sporting goods store) when they first provided it, and whether the sale of members' data could have harmful effects on them, as such "activities may expose those members to the risks associated with the development of a gambling addiction."

ECtHR Renders Decision on Russia's Foreign Agent Laws

On 22 October 2024, the European Court of Human Rights (ECtHR) rendered its Judgment in *Kobaliya and others v. Russia*. The case concerns legislation introduced in Russia beginning in 2012 requiring non-governmental organizations, and later media organizations and individuals, deemed to be engaging in "political activity" and receiving "foreign funding," to register as "foreign agents" under the threat of administrative and criminal sanctions. The applicants, a group of 107 individuals and organizations who had been either fined for allegedly failing to register as "foreign agents" or for allegedly failing to label their content as originating from a "foreign-agent" organization, argued that the legislation breached their rights under the European Convention.

The ECtHR agreed. It found that the legislation breached Article 8 of the Convention concerning the right to respect for private and family life, in respect of the individual applicants, as well as Articles 10 and 11, concerning freedom of expression, assembly and association, in respect of all the applicants. In particular, the ECtHR found that the legislation was stigmatizing, misleading, used in an overly broad and unpredictable way, and that its purpose was to punish and intimidate rather than to address any alleged need for transparency or legitimate concerns over national security, in violation of the Convention. In so holding, the ECtHR noted that it had seen no evidence that any of the 107 applicants had actually been under foreign control or acting in the interests of a foreign entity.

The ECtHR accordingly ordered Russia to pay a range of a pecuniary and non-pecuniary compensation to each of the applicants. Russia did not participate in the proceedings, having ceased being a party to the Convention in September 2022. ■

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.



Opportunities

Conferences, Webinars & Programs

University of Michigan Law School, 11th Annual Junior Scholars Conference

The University of Michigan Law School is pleased to invite scholars to submit their abstracts for the 11th Annual Junior Scholars Conference, which will take place in Ann Arbor, Michigan, on April 25-26, 2025. Please direct any questions to law-doconf@umich.edu.

The Venice Commission 1990-2025: Taking stock of 35 years for democracy through law

Bocconi University has released a call for papers for the international conference set to take place on 15 and 16 May 2025. The deadline to submit abstracts is 31 January 2025 and more information can be found [here](#).

The Cambridge International Law Journal (CILJ) 14th Annual Conference

The conference will take place on 28 and 29 April 2025 with the theme 'Navigating a Multipolar World: Challenges to the Post-WWII Status Quo of International Law'. The deadline to submit abstracts is 9 January 2025 and further information can be found [here](#).

Calls for Papers

Maritime Safety and Security Law

The Maritime Safety and Security Law Journal (Mar-SafeLaw Journal) is calling for papers on the topic of "*The Impact of Environmental and Climate Change on the Oceans and Marine Resources*". Deadline for submission of abstracts is **31 December 2024** and 31 March 2025 for submission of full papers. Further details can be found [here](#).

Job Postings & Other Opportunities

Associate Legal Officer/Courtroom Officer (P-2), International Criminal Court

Under the direct supervision of the Head of Judicial Operations Unit, the incumbent will perform the following duties: (1) Represents the Registry during the court proceedings; (2) Drafts SOPs, filings and memoranda in relation to the activities of the Court Management Section; Coordinates the preparation and support of the hearings; (3) Handles the evidence in accordance with the applicable standards; (4) Follows up closely the cases assigned to her/him in order to provide proper advice when required and ensure the accurate distribution of filings. Apply [here](#).

Head, Judicial Operations Unit (P-3), International Criminal Court

The Court Management Section (CMS) is in the Division of Judicial Services within the Registry. CMS has the Registry's delegated responsibility to provide support to core processes of the Court's judicial proceedings, in particular for the court operations and judicial information management. This includes (i.a) representing the Registrar during the court proceedings, supporting the current court applications and keeping a full and accurate record of all proceedings before the Chamber. Furthermore the Section is responsible for the receipt, processing and distribution of the official court filings, production of transcripts and the audio-visual recording of the proceedings. Additionally, CMS is the Registry's designated custodian of the record of proceedings and is therefore responsible for the management of judicial records and information, both in original form as well as in their electronic format. This position will report directly to the Chief of the Court Management Section. Apply [here](#).

Member News

Professor **Surya P. Subedi**, KC, Professor of International Law at the University of Leeds and barrister at Three Stone Chambers, Lincoln's Inn, London, has been nominated to the list of Arbitrators and Conciliators under Article 2 of Annex V and Article 2 of Annex VII of the United Nations Convention on the Law of the Sea of 1982. He was nominated by Nepal as a State party to the 1982 Convention. It was stated in a notification of 6 September 2024 released

by the office of the Secretary-General of the United Nations in his capacity as the depository of the 1982 Convention.

Benoit Mayer was appointed Professor of Climate Law at the University. He joined the [Global Law at Reading](#) research group and became Associate Director of the [Reading Centre for Climate and Justice](#).