



## Recent Case Law of International Courts

### Syllabus Fall semester 2024

Prof. Helen Keller and Dr. Viktoriya Gurash

#### 18 September 2024 – Introductory session

- Course modalities and organisational matters
- Overview on the topics dealt with during the course
- Introduction to ‘Contentious Jurisdiction of the International Court of Justice’ and ‘Extraterritorial Application of Human Rights Treaties in the Context of Armed Conflict’

### I. Contentious Jurisdiction of the International Court of Justice

#### 25 September 2024 – Compromissory Clause

- ICJ, Arbitral Award of 3 October 1899 (*Guyana v. Venezuela*), Judgment on Jurisdiction of the Court, 18 December 2020, **paras 23-138** [Link](#)
- ICJ, Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (*Ukraine v. Russian Federation*), Judgment on Preliminary Objections, 2 February 2024, **paras 1-9; 24-59; 73-108; 119-120; 131-151** [Link](#)

#### Readings:

- Dissenting Opinion of Judge Abraham in Arbitral Award of 3 October 1899 (*Guyana v. Venezuela*), Judgment on Jurisdiction of the Court, 18 December 2020 [Link](#)
- Separate Opinion of Judge Charlesworth in Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (*Ukraine v. Russian Federation*), Judgment on Preliminary Objections, 2 February 2024 [Link](#)
- Optional background readings: Shabtai Rosenne, ‘International Courts and Tribunals, Jurisdiction and Admissibility of Inter-State Applications’ (last updated March 2006) in A Peters and R Wolfrum (eds), *The Max Planck Encyclopedia of Public International Law* (Oxford University Press) [Link](#)

#### 2 October 2024 – Monetary Gold Principle and Standing to Litigate *Erga Omnes* Obligations

- ICJ, Arbitral Award of 3 October 1899 (*Guyana v. Venezuela*), Judgment on Preliminary objections, 6 April 2023 [Link](#)
- ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v. Myanmar*), Judgment on Preliminary Objections, 22 July 2022 **paras 1-33, 93-115** [Link](#)



Readings:

- Sarah Thin, 'Admissibility vs Jurisdiction in *Guyana v Venezuela* (ICJ)' (EJIL: Talk!, 25 April 2023) [Link](#)
- Shannon Raj Singh, 'Standing on "Shared Values": The ICJ's Myanmar Decision and its Implications for Atrocity Prevention' (OpinioJuris, 29 January 2020) [Link](#)
- Optional background readings: Zachary Mollengarden and Noam Zamir, 'The Monetary Gold Principle: Back to Basics' (2021) 115(1) *American Journal of International Law* 41-77 [Link](#); Jörg Kammerhofer, 'Obligations erga omnes' (last updated February 2024) in A Peters and R Wolfrum (eds), *The Max Planck Encyclopedia of Public International Law* (Oxford University Press) [Link](#)

## II. Extraterritorial Application of Human Rights Treaties

### **9 October 2024 – Context of Armed Conflict**

- ECtHR, *Georgia v. Russia (II)* [GC], App. no. 38263/08, 21 January 2021, **paras 30-44, 61-95, 105-175, 238-239, 268-270, 328-337** [Link](#)
- ECtHR, *Ukraine and the Netherlands v. Russia* [GC] dec., App. nos. 8019/16, 43800/14 and 28525/20, 30 November 2022, **paras 41-166, 503-706** [Link](#)

Readings:

- Isabella Risini, 'Human Rights in the Line of Fire: *Georgia v Russia (II)* before the European Court of Human Rights' (Verfassungsblog, 28 January 2021) [Link](#)
- Gaiane Nuridzhanian, 'Questions of Extraterritorial Jurisdiction in *Ukraine and the Netherlands v. Russia*' (Völkerrechtsblog, 27 January 2023) [Link](#)
- Optional background reading: Samantha Besson, 'The Extraterritoriality of the European Convention on Human Rights: Why Human Rights Depend on Jurisdiction and What Jurisdiction Amounts to' (2012) 25 *Leiden Journal of International Law* 857 [Link](#)

### **16 October 2024 – Trans-Boundary Environmental Harm**

- IACtHR, *Advisory Opinion OC-23/17, The Environment and Human Rights*, 15 November 2017, **paras 1-4, 71-104, 242-244** [Link](#)
- CRC, *Chiara Sacchi et al. v. Argentina*, Communication No. 104/2019, UN Doc CRC/C/88/D/104/2019, 22 September 2021 [Link](#)
- ECtHR, *Duarte Agostinho and Others v. Portugal and 32 Others* [GC] dec., App. no. 39371/20, 9 April 2024, **paras 11-39, 66-70, 77-83, 120-127, 165-214, 231** [Link](#)

Readings:

- Armando Rocha, 'States' Extraterritorial Jurisdiction for Climate-Related Impacts' (Verfassungsblog, 12 April 2024) [Link](#)
- Antal Berkes, 'A New Extraterritorial Jurisdictional Link Recognised by the IACtHR' (EJIL: Talk!, 28 March 2018) [Link](#)
- Optional background readings: Philipp Janig, 'Extraterritorial Application of Human Rights', in: Binder et al (eds), *Elgar Encyclopedia of Human Rights*, vol II (2022) 180-191 [Link](#); Nicola Wenzel, 'Human Rights, Treaties, Extraterritorial Application and Effects' (last



updated May 2008) in A Peters and R Wolfrum (eds), *The Max Planck Encyclopedia of Public International Law* (Oxford University Press) [Link](#)

### III. Climate Change

#### **23 October 2024 – Human Rights Perspective on Climate Change**

- ECtHR, *KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], App. no. 53600/20, 9 April 2024, **paras 10-42; 275-365; 410-574; 652-657** [Link](#)

Readings:

- George Letsas, ‘Did the Court in *Klimaseniorinnen* Create an Actio Popularis’ (EJIL: Talk!, 13 May 2024) [Link](#)
- Lea Raible, ‘Climate Change and Positive Obligations in the ECHR’ (Völkerrechtsblog, 29 April 2024) [Link](#)

#### **30 October 2024 – Law of the Sea Perspective on Climate Change**

- ITLOS, Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, 21 May 2024, **paras 1-8, 45-82, 123-441** [Link](#)

Readings:

- Joshua Paine, ‘The ITLOS Advisory Opinion on Climate Change: Selected Issues of Treaty Interpretation’ (EJIL: Talk!, 3 June 2024) [Link](#)
- Diane Desierto, ‘“Stringent Due Diligence”, Duties of Cooperation and Assistance to Climate Vulnerable States, and the Selective Integration of External Rules in the ITLOS Advisory Opinion on Climate Change and International Law’ (EJIL: Talk!, 3 June 2024) [Link](#)
- Optional background reading: Patibandla Chandrasekhara Rao, ‘International Tribunal for the Law of the Sea (ITLOS)’ (last updated March 2011) in A Peters and R Wolfrum (eds), *The Max Planck Encyclopedia of Public International Law* (Oxford University Press) [Link](#)

### IV. Use of Force and Provisional Measures

#### **6 November 2024 – Use of Force**

- ICJ, Arbitral Award of 3 October 1899 (*Guyana v. Venezuela*), Order on Provisional Measures, 1 December 2023 [Link](#)
- ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (*South Africa v. Israel*), Order on Provisional Measures, 26 January 2024, **paras 2, 11, 13-14, 24, 37-40, 46-53** [Link](#)
- ICJ, Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (*Ukraine v. Russian Federation*), Order on Provisional Measures, 16 March 2022, **paras 2, 14, 17-19, 30-46** [Link](#)



Readings:

- Nicholas Tsagourias, 'Essequibo referendum: An unlawful threat of force?' (EJIL: Talk!, 18 December 2023) [Link](#)
- Geir Ulfstein, 'Does Israel have the right to self-defence – and what are the restrictions?' (EJIL: Talk!, 8 May 2024) [Link](#)
- Optional background reading: Oliver Dörr, 'Prohibition of Use of Force' (last updated August 2019) in A Peters and R Wolfrum (eds), *The Max Planck Encyclopedia of Public International Law* (Oxford University Press) [Link](#)

**13 November 2024 – Provisional Measures**

- ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order on Provisional Measures, 26 January 2024 [Link](#)
  - Declaration of Judge Nolte [Link](#)

Readings:

- Roy Schondorf, 'Implausible Confusion: The Meaning of "Plausibility" in the ICJ's Provisional Measures' (EJIL: Talk!, 6 May 2024) [Link](#)
- Michael Becker, 'Desperate Times, Desperate (Provisional) Measures' (Verfassungsblog, 14 February 2024) [Link](#)
- *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order on Provisional Measures (24 May 2024) [Link](#)
- Adil Haque, 'Halt: The International Court of Justice and the Rafah Offensive' (Just Security, 24 May 2024) [Link](#)
- Optional background reading: ICJ, *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*, Order on Provisional Measures, 30 April 2024 [Link](#); Stefan Talmon, 'The International Court of Justice Severely Limits Germany's Ability to Transfer Arms to Israel' (German Practice in International Law, 2 May 2024) [Link](#)

**V. Reparations**

**20 November 2024**

- ICJ, *Armed Activities on the Territory of the Congo (DRC v. Uganda)*, Reparations, 9 February 2022, paras 48-131, 145-166, 173-181, 188-193, 199-206, 214-226, 239-258, 268-384, 404-409 [Link](#)

Readings:

- Sebastian Lukic and Lili Hanna Feher, 'Awarding Damages Flexibly: ... or Painting with a Broad Brush' (Völkerrechtsblog, 11 March 2022) [Link](#)
- Optional background reading: James Crawford, 'State Responsibility' (last updated September 2006) in A Peters and R Wolfrum (eds), *The Max Planck Encyclopedia of Public International Law* (Oxford University Press) [Link](#)



## VI. Human Rights and States' Margin of Appreciation

### 27 November 2024 – Environment and Public Health

- ECtHR, *Klimaseniorinnen Schweiz and Others v. Switzerland* [GC], App. no. 53600/20, 9 April 2024, **paras 10-21, 64-120, 538-574** [Link](#)
- ECtHR, *Pavlov and Others v. Russia*, App. no. 31612/09, 11 October 2022, **paras 1-48, 73-93** [Link](#)
- ECtHR, *Vavříčka and Others v. the Czech Republic* [GC], App. nos. 47621/13, 3867/14, 73094/14, 19298/15, 19306/15 and 43883/15, 8 April 2021, **paras 11-64, 258-312** [Link](#)
- ECtHR, *Dubská and Krejzová v. the Czech Republic* [GC], App. nos. 28859/11 and 28473/12, 15 November 2016, **paras 8-34, 69-122, 160-191** [Link](#)

#### Readings:

- Ciarán Burke Alexandra Molitorisová, '(Not) Proving the Public Good: Scientific Evidence and the Margin of Appreciation' (2019) 18 *The Law and Practice of International Courts and Tribunals* 240 [Link](#)
- Eyal Benvenisti, 'The Margin of Appreciation, Subsidiarity and Global Challenges to Democracy' (2018) 9 *Journal of International Dispute Settlement* 240 [Link](#)
- Optional background reading: Başak Çali, 'Balancing Test: European Court of Human Rights (ECtHR)' (last updated September 2018) in A Peters and R Wolfrum (eds), *The Max Planck Encyclopedia of Public International Law* (Oxford University Press) [Link](#)

### 4 December 2024 – Religious Symbols

- CCPR, *Yaker v. France*, Communication No. 2747/2016, UN Doc CCPR/C/123/D/2747/2016, 17 July 2018 [Link](#)
- ECtHR, *S.A.S. v. France* [GC], App. no. 43835/11, 1 July 2014 [Link](#)
- ECtHR, *Mikyas and Others v. Belgium*, App. no. 50681/20, 9 April 2024 [Link](#)

#### Readings:

- Saïla Ouald Chaib and Lourdes Peroni, 'S.A.S. v. France: Missed opportunity to do full justice to women wearing a face veil' (Strasbourg Observers, 3 July 2014) [Link](#)
- Saïla Ouald Chaib, 'Mikyas v. Belgium: One more "Headscarf case" that manifestly fails to acknowledge applicants' concerns' (Strasbourg Observers, 17 July 2024) [Link](#)
- Optional background reading: Tarunabh Khaitan and Jane Calderwood Norton, 'Religion in Human Rights Law: A Normative Restatement' (2020) 18 *I-CON* 111 [Link](#)

Summing up and preparation for the exam: students are expected to review all course material in view of preparing for the exam.

### 16-18 December 2024 – take-home exam