



LAGOS  
MODEL  
UNITED  
NATIONS

2025

## BACKGROUND GUIDE



# The International Court of Justice

(ICJ)



Property of the Lagos Model United Nations

Background Guide: International Court of Justice

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LMUN 2025: The Ninth Session



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## Letter From the USG


Dear Delegates,

I am delighted to extend a warm welcome to you as participants in the [9th session of the Lagos Model United Nations 2025](#). For nearly a decade, LMUN has provided a platform where students across Nigeria gather to debate pressing global issues, develop diplomatic skills, and forge lasting connections. This year, I have the pleasure of introducing you to the International Court of Justice (ICJ) committee.

Unlike traditional MUN committees that draft resolutions through negotiation and consensus, the ICJ offers a unique opportunity to engage with international law through a judicial perspective. As judges of the Court, you will analyse legal arguments, apply international law principles, and deliver reasoned judgments on complex global disputes. This experience promises to sharpen your analytical thinking, enhance your understanding of international legal frameworks, and develop your ability to reconcile competing legal claims.

To guide you through this distinctive MUN experience, we have assembled an exceptional team: [Oluwasemilore Oluwatimilehin](#) (Under Secretary General); [Ejiwunmi Owoyemi](#) (President);

[Daniel Elebiju](#) (Vice President); [Akintola Peter Oluwaseun](#) (Registrar). [Ajayi Israel Oluwadara](#) (Departmental Researcher)



**Ejiwunmi** is a 500-level law student at the University of Lagos with impressive credentials in dispute resolution as an Associate Member of the Institute of Chartered Mediators and Conciliators. Her MUN journey began in 2020, and she distinguished herself in LMUN 2023 by earning the Best Position Paper award in the World Health Organization committee. In 2024, she served as Researcher for General Assembly 2, demonstrating her commitment to substantive research and thoughtful analysis. Her dedication to SDGs 4, 5, and 16 reflects her passion for equal access to education, justice, and opportunities, particularly for women and marginalised groups. As President of the ICJ for LMUN 2025, she brings valuable experience in justice, leadership, and youth-driven diplomacy.

**Daniel**, a 4th-year law student at the University of Lagos, brings continuity to the ICJ, having served as a Judge in the 2024 session where he received the Distinguished Delegate award. His MUN journey began during his secondary school years and continued with his participation as a delegate in the UNICEF committee at LMUN 2023. Beyond MUN, his commitment to SDG 4 (Quality Education) has led him to volunteer with School for Sustainability, an organisation dedicated to equipping young people to build a sustainable future through knowledge sharing, environmental responsibility, and innovative action. He also champions SDGs 7 (Affordable and Clean Energy) and 8 (Decent Work and Economic Growth). As Vice President, his experience will be invaluable to first-time ICJ participants.




**Peter**, a final-year Finance student at the University of Lagos, rounds out our team as Registrar. His MUN journey spans participation in both Babcock MUN and LMUN, where he engaged actively in discussions on policy, innovation, and sustainable development. His current research on fintech's impact on customer experience in Nigerian banks and COVID-19's effect on the Nigerian capital market demonstrates his analytical approach to complex issues. With professional background in credit and risk management, sales, and customer care, Peter brings a multidisciplinary perspective that enhances the ICJ's consideration of cases with economic dimensions.

The International Court of Justice, as the principal judicial organ of the United Nations, plays a crucial role in settling legal disputes submitted by states and providing advisory opinions on legal questions referred by authorised UN organs and specialised agencies. The ICJ's judgments shape international law and influence global governance, making its work essential to maintaining international peace and security through legal means.

**Israel** is a final year law student of the prestigious University of Lagos. He is a creative and legal writer with several works under his belt and years of legal research experience. He possesses keen interest and knowledge about the United Nations, International Law, and Global Security. He is currently serving as the Departmental Researcher for the Peace and Security Department at the 9th session of the LMUN 2025.

**This year, the ICJ committee will address two significant cases:**






I. Contentious Case: Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)

II. Advisory Opinion: Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development

The Background Guide provides essential information on these cases, including factual backgrounds, legal issues, and key precedents. I encourage you to study it thoroughly while conducting additional research on international legal principles, relevant treaties, and past ICJ decisions. As judges, your role requires a comprehensive understanding of both the specific cases and the broader legal frameworks within which they exist.

Unlike traditional committees, where delegates represent country positions, ICJ judges serve in their individual capacities and are expected to render impartial judgments based solely on legal considerations. Your preparation should therefore focus on developing a thorough understanding of international law and the ability to apply legal principles objectively to complex factual situations.

To assist your preparation, please review the ICJ Judges' Handbook and Rules of Procedure available on the LMUN website ([www.lmun.ng](http://www.lmun.ng)). These resources will



familiarise you with court procedures, deliberation processes, and judgment drafting requirements.

For questions regarding committee preparation or conference logistics, please contact [usgpeaceandsecurity@lmun.ng](mailto:usgpeaceandsecurity@lmun.ng). Our team stands ready to support your journey toward becoming effective international jurists.

I look forward to witnessing your engagement with these fascinating legal questions. The analytical skills, legal reasoning, and judicial temperament you develop through this experience will serve you well in your future endeavours, whether in law or other fields requiring careful analysis and reasoned judgment.

Welcome to LMUN 2025. Welcome to the International Court of Justice.

Warmest regards,

**Oluwasemilore Oluwatimilehin**

**USG, Peace and Security, LMUN 2025**

## Abbreviations

<b>CERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>ECHR</b>	European Convention on Human Rights
<b>ICSFT</b>	International Convention for the Suppression of the Financing of Terrorism
<b>ICJ</b>	International Court of Justice
<b>IFAD</b>	International Fund for Agricultural Development
<b>ILO</b>	International Labour Organisation
<b>ILOAT</b>	International Labour Organization Administrative Tribunal
<b>PCA</b>	Permanent Court of Arbitration
<b>PCIJ</b>	Permanent Court of International Justice
<b>UN</b>	United Nations
<b>UNAT</b>	United Nations Appeals Tribunal
<b>UNDT</b>	United Nations Dispute Tribunal



## Committee Overview

### I - Historical Background of the International Court of Justice


The ICJ is the principal judicial organ of the United Nations. It was established in June 1945 by the Charter of the United Nations and became operational in April the following year.<sup>1</sup> The Court's creation resulted from the long journey to peacefully resolve international disputes, which has been ongoing since classical times.

International arbitration originated from the 1794 Jay Treaty between the United States and Great Britain, which established three mixed commissions that acted as tribunals and were equally composed of both sets of nationals to resolve disputes between both nations. Other states in Europe and the Americas joined them in employing arbitration in the 19th century.<sup>2</sup> Under the 1871 Treaty of Washington, both nations agreed to arbitrate US claims of British neutrality breaches during the Civil War. A tribunal of five members appointed by both states and three others ordered the UK to pay compensation, which it fulfilled. This success led to more treaty arbitration clauses and proposals for a permanent arbitral tribunal.

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<sup>1</sup> International Court of Justice “The Court”

<sup>2</sup> International Court of Justice “History”



Next up was the 1899 Convention on the Pacific Settlement of International Disputes resulting from the Hague Peace Conference in the same year, which aimed to codify peace and disarmament terms, including smaller European states, Asian states, and Mexico. It established the Permanent Court of Arbitration in 1900, operational in 1902, to support functional arbitral tribunals. Each signatory state could nominate up to four jurists for a panel from which tribunal members would be selected. A permanent bureau in The Hague was created to act as the registry and set up the rules of procedure. This system standardised arbitration, although without a court system. The second Hague Peace Conference in 1907 included more American states, revised the 1899 Convention, and improved arbitration rules. The US proposed a permanent tribunal with full-time judges representing diverse legal systems and languages but disagreements over judge selection prevented a consensus. However, a draft convention was recommended for a court of arbitral justice pending the resolution of the selection issue. This proposed court was never created but it was the inspiration behind the Statute of the Permanent Court of International Justice.


The Permanent Court of Arbitration, which took residence in the Peace Palace in 1913, demonstrated through landmark cases that tribunals created through permanent machinery could fairly and respectfully resolve disputes. However, the system had shortcomings. Tribunals with varying members were inconsistent compared to their



permanent counterparts in applying international law, and the system was voluntary, rendering it ineffective.

After the First World War, the 1919 Covenant of the League of Nations was enacted. Article 14 gave the Council the responsibility to create the Permanent Court of International Justice to handle disputes and provide advisory opinions. In 1920, an advisory committee of jurists drafted a plan for the PCIJ, which was unanimously adopted as the PCIJ Statute in December after the council had amended and submitted it to the council. The assembly required formal ratification of the PCIJ Statute by its members, with the Statute effective once a majority ratified it in 1921. It resolved the judge selection issue by electing judges independently but concurrently by the Council and Assembly to ensure representation of major legal systems. The PCIJ was seated at the Peace Palace in The Hague and became operational in 1922, offering a permanent, structured, and consistent tribunal advancing international law. League of Nations membership did not guarantee participation in the PCIJ's Statute, ensuring its independence. The Court successfully adjudicated 29 contentious cases and issued 27 advisory opinions from 1922 to 1940.

The war in 1939 halted the PCIJ's judicial work. It sat for the last time in December 1939, issued its final order in February 1940, and moved to Geneva that year. The US, UK, USSR, and China backed a new international court, and in 1943, an Inter-Allied Committee



proposed basing it on the PCIJ, with advisory and voluntary jurisdiction, while it was excluded from political disputes. This resulted in the 1944 Dumbarton Oaks discussions and proposals and the 1945 San Francisco conference, which sparked the idea of a new court as a principal UN organ. The draft Statute was based on the Statute of the PCIJ. It also ensured that all UN members were parties to the statute to ensure global representation, as the UN expanded from 51 members in 1945 to 193 in 2020. The PCIJ's judges resigned in January 1946 and the Court was dissolved in April after transferring its archives and jurisdiction to the ICJ. The ICJ heard its first case in May 1947 with Judge José Gustavo Guerrero as its President.

## **II - Governance, Structure, and Membership**

The International Court of Justice (ICJ) is built on principles of fairness, representation, and the rule of law. Its structure is carefully crafted to ensure justice is administered effectively while reflecting the diversity of the global community. At the heart of its operations are two important components: the Permanent Court of Arbitration (PCA) and the Registry.<sup>3</sup>

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<sup>3</sup> History | International Court of Justice.

## The Parliament Court of Arbitration (PCA)

The Permanent Court of Arbitration (PCA), established in 1899, is a separate organisation from the ICJ, yet it plays a crucial supporting role in international dispute resolution by providing the infrastructure and resources needed for arbitration and mediation. It maintains a list of experienced arbitrators that states and other parties can choose from to address conflicts ranging from trade disputes to environmental issues. The PCA also manages the logistics and ideology of arbitration, such as organising hearings, ensuring equal access to information, and facilitating the enforcement of arbitral awards. Its flexibility allows it to handle disputes not just between states but also between states and private entities or international organisations, making it a versatile and essential part of the global legal framework. While it doesn't issue binding judicial rulings like the ICJ, its smooth collaboration with the court ensures that disputes are resolved efficiently, fairly, and in line with international law, strengthening global stability and cooperation.<sup>4</sup>


## The Registry

On the other hand, the Registry acts as the ICJ's administrative powerhouse. The Registry of the ICJ is like the engine that keeps the court running smoothly. It handles all the administrative work needed to support the judges and ensure cases move forward without delays. Led by the Registrar, who acts as the court's chief administrator, the Registry takes care of everything from managing case files and organising hearings to

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<sup>4</sup> Statute of the International Court of Justice 1945, Art 13.






maintaining court records and finances. It also serves as the main point of contact between the court and the parties involved, ensuring clear communication and equal access to information. Beyond that, the Registry helps interpret and apply the court's rules, provides procedural guidance, and even manages the archives, preserving records for future reference. Essentially, the Registry is the backbone of the ICJ, making sure all the behind-the-scenes operations run efficiently so the court can focus on delivering justice.

Membership in the ICJ is open to all United Nations member states, which means that the court represents a broad range of legal traditions and cultural perspectives. This diversity enhances the legitimacy of its decisions. However, not every member state automatically falls under the ICJ's jurisdiction. States must explicitly agree to be bound by making a formal declaration under article 36(2) of the statute<sup>5</sup> or through agreements specific to each case. This adaptability allows countries to work with the ICJ on terms that suit their legal frameworks. As of 2023, there are 193 Member States of the United Nations and each member state has the right to bring cases before the court. With its wide membership, the court benefits from a mix of legal traditions, cultural views, and regional insights, making its decisions more balanced, credible, and widely accepted around the world.

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<sup>5</sup> Statute of the International Court of Justice. Art 36(2).




Beyond its role in resolving disputes, the ICJ contributes to the development of international law. Through its advisory opinions offered at the request of organisations like the United Nations, it helps clarify complex legal issues and also shapes how international law evolves over time.

Leadership within the ICJ is also worth taking note of. The President and Vice-President who their fellow judges elect, ensure the court operates smoothly and remains independent. The President of the ICJ holds a vital role in guiding the court's activities and ensuring its smooth operation. Elected by the judges, the President is responsible for overseeing the court's judicial work, making sure hearings and meetings run effectively and efficiently. They also represent the court to the outside world, speaking on its behalf at public events, delivering speeches, and attending important functions. Beyond these duties, the President ensures the court's independence and integrity, making<sup>6</sup>certain that all proceedings are fair and adhere to the principles of international law. Essentially, the President helps steer the court, maintaining its focus on delivering justice while ensuring that its decisions remain impartial and respected worldwide. The leadership of the President is key to the court's credibility, as they play a crucial role in upholding the values that guide the ICJ's work.

The Vice-President of the ICJ plays an equally important role, supporting the President and helping ensure the court runs smoothly. Elected by the judges, the Vice-President acts

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<sup>6</sup> Statute of the International Court of Justice 1945.



as the President's deputy, stepping in whenever the President is absent or unavailable. In addition to assisting with judicial duties, the Vice-President helps maintain the court's day-to-day operations and ensures that everything stays on track. They also have a key role in supporting the President's leadership and ensuring continuity within the court. Just like the President, the Vice-President helps uphold the ICJ's independence and integrity, working to ensure that justice is administered impartially and in line with international law. Their role is essential in making sure the court's mission of promoting peace and justice is carried out effectively and consistently.

In summary, the ICJ is a well-structured institution designed to uphold justice globally. Its inclusive membership, clear governance, and commitment to the rule of law make it a key player in promoting peace and cooperation among nations.

### **III - Mandate, Powers, and Functions**


The International Court of Justice, often referred to as the "World Court", is the principal judicial organ of the United Nations and serves as the world's highest international court.

<sup>7</sup> The seat of the court can be found at the Peace Palace in The Hague (Netherlands). It is the only organ out of all the organs of the ICJ that is not located in New York (United States of America). The ICJ has 15 judges which are elected by the UN General Assembly and Security Council for a term of Nine(9) years.<sup>8</sup>

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<sup>7</sup> Statute of the International Court of Justice 1945, Art 30.

<sup>8</sup> United Nations General Assembly (1946). Establishment of the ICJ




The mandate of the ICJ is centered around clarifying international laws and resolving disputes. However, only states can bring cases to the court organizations and individuals are not permitted to do so. The jurisdiction of the court is dependent on the consent of the states involved. This jurisdiction depends on either special agreements, treaties, or declarations. The jurisdiction is twofold. It can be compulsory or ad hoc. It is compulsory where the States declare acceptance of the Court's jurisdiction as compulsory, obligating them to submit to the Court's rulings in legal disputes with other states that have made similar declarations. The jurisdiction is ad hoc, where the States can consent to the Court's jurisdiction for specific cases, even if they have not accepted compulsory jurisdiction. The key thing to note here is that consent is very essential to the court's jurisdiction.

The ICJ is bestowed with the power to issue judgments that are binding on different disputes brought before it. Although, these judgments also depend on the voluntary compliance of the parties involved. If one of the states refuses to comply, then the UN Security Council can intervene and enforce the ruling.<sup>9</sup> The ICJ also provides advisory opinions to different legal questions referred to it by international organizations or the UN itself in addition to its mandate of resolving disputes. These opinions carry significant weight even though they are non-binding. They shape international legal principles and also influence global decision-making.

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<sup>9</sup> United Nations Security Council. (n.d). Enforcement of ICJ Judgments



One of the key functions of the ICJ is resolving disputes between states. The court conducts thorough proceedings once a case is submitted allowing both parties in the dispute to present their arguments and evidence through oral hearings and also written submissions. After careful deliberation, the court gives binding judgements that may sometimes include measures to address violations of international law in the case. The ICJ also centrally interprets international agreements and treaties and clarifies their provisions in order to ensure states consistently apply them. This particular role of the ICJ is instrumental in ensuring that the integrity of international agreements are maintained.


The ICJ's contribution to the advancement of international law is another crucial duty. The court contributes to the development of international norms and customary law by resolving unsettled legal issues and establishing precedents.<sup>10</sup> Even judges' dissenting views have the power to shape how legal concepts are interpreted in the future. Furthermore, the ICJ is essential in settling conflicts involving maritime and international borders. By offering legal resolutions to frequently delicate issues, its rulings help clarify territorial sovereignty and resource distribution in these instances.<sup>11</sup>

The ICJ offers advisory opinions on complicated legal issues to help the UN and other international organisations. These views provide authoritative interpretations of

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<sup>10</sup> International Court of Justice. (n.d).

<sup>11</sup> International Court of Justice. (n.d).




international law and aid in decision-making on important global issues such as military interventions, even if they are not legally enforceable, the judgment of the ICJ carries significant legal and moral authority. The court's reputation is known for its impartiality and as a respectable judicial institution which is why most states comply.<sup>12</sup>

The work of the ICJ promotes peaceful conflict resolution, the rule of law, and the consistent application of international laws. Its advisory opinions and decisions create a framework for resolving disputes without resorting to violence, which fosters stability and cooperation among states. The ICJ, as an effective Judicial arm of the United Nations, continues to strengthen the global legal order and uphold Justice.

Additionally, The International Court of Justice (ICJ) fulfills its mandate through a structured process that encompasses both contentious cases and advisory proceedings. In contentious cases, the ICJ adjudicates legal disputes between sovereign states that have consented to its jurisdiction. The process involves several key steps such as: Application submission, where a state initiates proceedings by submitting an application instituting proceedings against another state, written pleadings, where both parties submit written memorials and counter-memorials detailing their legal arguments and supporting evidence, oral hearings, where the Court conducts public hearings where representatives of the parties present oral arguments, and deliberation and judgment where after

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<sup>12</sup> United Nations General Assembly, (1946)



considering the submissions, the ICJ deliberates in private and issues a binding judgment based on international law. This procedure ensures that disputes are resolved impartially and in accordance with legal principles.<sup>13</sup>


Beyond contentious cases, the ICJ offers advisory opinions on legal questions referred to it by authorized UN organs and specialised agencies. These opinions, while non-binding, carry significant legal weight and can influence international law development. A notable recent example is the ICJ being requested to provide an advisory opinion on the legality of Israel's prolonged occupation of Palestinian territories, a contentious issue at the heart of Middle Eastern geopolitics.<sup>14</sup> This request, made by the United Nations General Assembly, reflects the international community's effort to address long-standing disputes under the framework of international law.

The ICJ's powers derive from its Statute, which is an integral part of the UN Charter. These powers allow it to interpret international law, adjudicate contentious cases, and contribute to the development of international jurisprudence. Its decisions are binding on states that have accepted its jurisdiction, fostering accountability and respect for international legal norms.

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<sup>13</sup> International Court of Justice

<sup>14</sup> International Court of Justice- Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem.



The Court's functions underscore its significance in resolving disputes amicably, preventing conflicts, and upholding the rule of law on a global scale. By fostering cooperation and adherence to international law, the ICJ remains a cornerstone of global governance, ensuring that states act within a framework of legality and justice.

#### IV - Recent Sessions and Current Priorities

One of the recent key sessions that the International Court of Justice (ICJ) has presided over in 2024 is on the filings of other states intervening in the case of *The Gambia v Myanmar*. One of the states that sought declaration of intervention in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (the "Genocide Convention")* is Slovenia. Slovenia relied on its status as a party to the Genocide Convention and set out in the declaration, the interpretation of Articles I, II, III, IV, V and VI.<sup>15</sup>


On November 11 2019, The Gambia initiated proceedings against Myanmar at the International Court of Justice (ICJ), alleging violations of the Convention on the Prevention and Punishment of the Crime of Genocide (the "Genocide Convention") concerning the treatment of the Rohingya population. This case garnered significant international attention, prompting several states to intervene, including Slovenia.<sup>16</sup> On

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<sup>15</sup> International Court of Justice, "Press release December 2024 on Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar: 7 States intervening).

<sup>16</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar).






January 23, 2020, the Court issued an Order mandating several provisional measures. These included requiring Myanmar to take all possible actions to prevent acts outlined in Article II of the Genocide Convention against members of the Rohingya group within its territory. Myanmar was also directed to implement effective measures to prevent the destruction of and to preserve evidence related to allegations of such acts. Additionally, Myanmar was ordered to submit a report to the Court detailing the steps taken to comply with the Order within four months from the date of the Order and subsequently every six months until a final decision in the case is reached.

On July 22, 2022, the ICJ ruled on Myanmar's preliminary objections to The Gambia's allegations of Genocide Convention violations. By dismissing these objections, the Court affirmed its jurisdiction over the case and deemed The Gambia's application admissible.<sup>17</sup>

On November 29, 2024, Slovenia submitted a declaration of intervention under Article 63 of the ICJ Statute. This article permits any state party to a convention under consideration by the Court to intervene in proceedings if it believes it has an interest in the interpretation of that convention. Slovenia's intervention underscores its commitment to the principles enshrined in the Genocide Convention and reflects its dedication to upholding international law. Article 63 of the ICJ Statute allows states that are parties to a convention under examination to intervene in cases where the Court's judgment may

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<sup>17</sup> "ICJ dismisses the preliminary objections over The Gambia's claims regarding Myanmar's violation of the Genocide Convention" article by Ying Sun



affect their interests. Slovenia, as a party to the Genocide Convention, exercised this right to present its interpretation of the Convention's provisions, particularly concerning the obligations of states to prevent and punish acts of genocide.

Slovenia highlighted that Myanmar exercises jurisdiction over the territory where the alleged genocide is occurring. The European country urged the Court to evaluate all actions collectively to establish the "intention" to destroy, in whole or in part, a group as defined under Article II of the Genocide Convention. Slovenia argued that interpreting intention narrowly solely based on verbal statements by officials or state institutions could obscure the genuine underlying intent.<sup>18</sup>

The Court has acknowledged these interventions, permitting the participating states to share their perspectives on the interpretation of the Convention. However, the ICJ has not yet delivered a final ruling on the allegations against Myanmar or the impact of interventions by Slovenia and other states. The case remains ongoing, with a final decision expected in the future.<sup>19</sup>


Another recent session in the ICJ is the public hearing on the request for an advisory opinion on the obligations of states in respect of Climate Change. This is to clarify the obligations of the states and the consequences for breaching them.<sup>20</sup> In September 2021,

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<sup>18</sup> Sandar Linn | Newcastle Law School, GB

<sup>19</sup> International Court of Justice, Declaration of intervention of Slovenia.

<sup>20</sup> Obligations of States in Respect of Climate Change “Press Release December 2024”




Vanuatu, a Pacific island nation, announced its plan to request an advisory opinion from the International Court of Justice (ICJ) on climate change. This initiative, driven by the youth group Pacific Island Students Fighting Climate Change, was motivated by Vanuatu's and other small island developing states' heightened vulnerability to climate change and the urgent need for stronger global action to address the crisis.

Vanuatu subsequently sought support from other nations and led the core group of UN Member States to advance the initiative within the General Assembly. This led to the drafting of Resolution A/RES/77/276<sup>21</sup>, which was adopted by the General Assembly on 29 March 2023. The hearings focus on states' obligations regarding climate change and the legal consequences of failing to meet these obligations. This initiative aims to establish a legal framework for addressing climate change and clarify international law in this context. The court's advisory opinion could greatly impact and influence global climate action. The court is posed with questions regarding clarification of states' obligations under international law to protect the environment from human-caused emissions and to determine the legal consequences for states that harm the climate, particularly regarding vulnerable small island states and affected present and future generations.

The public hearings commenced on December 2, 2024, allowing states and organizations to expand on their written submissions and address the Court's questions during oral

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<sup>21</sup> Resolution adopted by the General Assembly on March 29, 2023.



proceedings. All UN Member States were eligible to participate in the proceedings, along with several organizations, including the Alliance of Small Island States (AOSIS), the Organization of the Petroleum Exporting Countries (OPEC), and the International Union for the Conservation of Nature (IUCN). The Court's registry received 91 written statements and 62 written comments, and over 100 oral statements were presented during the hearings. With both written and oral proceedings completed, the Court has now entered deliberations and will deliver its advisory opinion in open court, anticipated in early 2025.<sup>22</sup>

## Conclusion

The International Court of Justice is the leading judicial body of the United Nations, built over a century from one-off arbitrations into today's structured and impartial tribunal. Its rules and membership strike a careful balance among different legal traditions and global regions, while its mandate, that is, binding judgments, advisory opinions, and the peaceful settlement of disputes between states, shows its firm commitment to the rule of law.

Recent sessions, from provisional measures in *The Gambia v. Myanmar* to advisory hearings on climate obligations, prove the Court's lasting importance in handling both traditional and new challenges. As you prepare to serve as judges, this overview should help you value the Court's rich history and its active role today, guiding you to apply legal

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<sup>22</sup> International Court of Justice Hearings on the Obligations of States in Respect of Climate Change (December 2-13, 2024 | International Court of Justice, The Hague, Netherlands).

principles with precision, fairness, and a view toward shaping international law for the future.

## V - Annotated Bibliography

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# Contentious Case One: Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)

## I - Quote

*“The prevention of racial discrimination and the suppression of terrorism are not merely legal obligations but moral imperatives, requiring states to act with vigilance and fairness, ensuring that the fight against one injustice does not perpetuate another.”*


- Judge Rosalyn Higgins<sup>23</sup>

## Summary of Facts

In 2014, Russia annexed Crimea, a region internationally recognized as part of Ukraine. This action led to significant geopolitical tensions and was widely condemned by the international community. Following the annexation, armed conflicts erupted in eastern Ukraine, particularly in the Donetsk and Luhansk regions, between Ukrainian forces and

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<sup>23</sup> Separate Opinion of Judge Rosalyn Higgins, *Bosnia and Herzegovina v. Serbia and Montenegro*. International Court of Justice, Judgment of February 26, 2007.



separatist groups.<sup>24</sup> Ukraine accused Russia of supporting these separatists, including providing financial assistance and military equipment.


Ukraine contended that Russia financed and supported terrorist activities in eastern Ukraine and Crimea, including the provision of weapons and financial resources to separatist groups, thereby violating the International Convention for the Suppression of the Financing of Terrorism (ICSFT).

Ukraine also alleged that Russia engaged in discriminatory practices against ethnic Ukrainians and Crimean Tatars in Crimea, such as suppressing the use of the Ukrainian language, restricting educational rights, and persecuting individuals based on their ethnic origin, violating the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

In March 2017, Ukraine requested the International Court of Justice (ICJ) to indicate provisional measures against Russia to prevent further alleged violations. The ICJ issued an order on April 19, 2017, directing Russia to refrain from restricting the activities of the Mejlis (the representative body of the Crimean Tatar people) and to allow it to resume its activities. However, the ICJ did not grant Ukraine's request for provisional measures

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<sup>24</sup> See Concerning Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), 2018.



concerning the financing of terrorism. Russia raised preliminary objections to the jurisdiction of the ICJ and the admissibility of Ukraine's claims. On November 8, 2019, the ICJ ruled that it had jurisdiction to hear Ukraine's claims under both the ICSFT and CERD and that the case was admissible.

A significant factual issue was whether Ukraine had provided sufficient evidence to demonstrate Russia's direct responsibility under the ICSFT and CERD. Also, Russia contested the ICJ's jurisdiction over the claims and the sufficiency of the evidence provided by Ukraine. The legal issue prominent in the case was whether Russia's alleged financial and material support to separatist groups in eastern Ukraine, including the provision of weapons and resources, constituted a breach of its obligations under the ICSFT. Also, whether Russia discriminated against ethnic Ukrainians and Crimean Tatars in Crimea following its annexation. The key allegations included suppressing the Ukrainian language, restricting educational rights, dissolving the Mejlis (the Crimean Tatars' representative body), and targeting these groups through repressive measures.

The ICJ held public hearings from June 6 to June 14, 2023, to examine the merits of the case. On January 31, 2024, the ICJ delivered its judgment. Ultimately, the ICJ ruled on these issues by examining the evidence presented and interpreting the scope of each convention's obligations. The Court found Russia in violation of CERD concerning



discrimination in Crimea but dismissed Ukraine's ICSFT claims due to insufficient evidence of intent and knowledge in financing terrorism.

### **Issues Brought before the Court**

1. Did Russia provide financial and material support to separatist groups in Eastern Ukraine, including involvement in the downing of Malaysia Airlines Flight MH17, in violation of the International Convention for the Suppression of the Financing of Terrorism (ICSFT)?
2. Did Russia engage in systematic discrimination against Crimean Tatars and ethnic Ukrainians in Crimea, including banning cultural institutions, restricting education in Ukrainian, and harassment of minorities, in breach of the Convention on the Elimination of All Forms of Racial Discrimination (CERD)?
3. Does the ICJ have jurisdiction to hear Ukraine's claims, and do these claims fall within the scope of the ICSFT and CERD treaties?
4. Should the ICJ grant provisional measures to halt Russia's military operations, and did Russia violate the Genocide Convention by using genocide claims as a pretext for its 2022 invasion of Ukraine?



## Timeline of Events

- **February 23-27, 2014:** Russia deploys troops to Crimea, seizes key facilities, and blocks Ukrainian forces.
- **March 16, 2014:** Crimea holds a controversial referendum on joining Russia, declared illegal by Ukraine and most of the international community.
- **March 18, 2014:** Russia signs a treaty formalizing Crimea's annexation.
- **April 2014:** Pro-Russian separatists declare the Donetsk and Luhansk People's Republics in Eastern Ukraine, sparking armed conflict.
- **July 17, 2014:** Malaysia Airlines Flight MH17 is shot down, killing 298 people. International investigations link the incident to a Russian-supplied missile system.
- **September 5, 2014:** The **Minsk I Agreement** is signed to de-escalate the conflict, but violations continue.
- **February 12, 2015:** The **Minsk II Agreement** is signed, imposing a ceasefire and withdrawal of heavy weapons, but fighting persists.
- **November 17, 2015:** Ukraine reports new evidence to the ICJ regarding Russian support for separatists.
- **January 18, 2016:** Ukraine submits documentation to the ICJ highlighting racial discrimination against Crimean Tatars and ethnic Ukrainians.
- **May 3, 2016:** Russia bans the Mejlis, the representative body of Crimean Tatars, labelling it an extremist organization.

- **December 19, 2016:** The UN General Assembly passes a resolution condemning Russia's occupation of Crimea and human rights abuses.
- **February 26, 2017:** Ukraine files a complaint against Russia at the ICJ alleging violations of the International Convention for the Suppression of the Financing of Terrorism and the International Convention on the Elimination of All Forms of Racial Discrimination.
- **March 16, 2017:** ICJ orders Russia to suspend military operations in Ukraine.
- **November 25, 2018:** Russian forces capture three Ukrainian naval vessels and detain 24 sailors near the Kerch Strait, accusing Ukraine of violating Russian territorial waters.
- **April 2019:** Volodymyr Zelenskyy Elected President of Ukraine.
- **December 9, 2019:** Leaders from Ukraine, Russia, Germany, and France meet in Paris to discuss conflict resolution in Eastern Ukraine.
- **April 2020:** Both Ukrainian forces and separatists report increased ceasefire violations.
- **July 27, 2020:** A comprehensive ceasefire is negotiated and implemented in Eastern Ukraine.
- **April 2021:** Russia amasses tens of thousands of troops along Ukraine's border.
- **September 1, 2021:** The United States and Ukraine renew their strategic partnership.

- **November-December 2021:** A significant Russian military presence is reported near Ukraine's borders.
- **February 24, 2022:** Russia launches a full-scale invasion of Ukraine, intensifying the armed conflict.
- **February 26, 2022:** Ukraine files an urgent request with the ICJ, accusing Russia of violating the Genocide Convention by falsely justifying the invasion.
- **March 7-8, 2022:** ICJ holds emergency hearings to address Ukraine's request for provisional measures.
- **March 16, 2022:** ICJ orders Russia to immediately suspend military operations in Ukraine.
- **September 18-27, 2022:** Public hearings at the ICJ regarding Ukraine's allegations.
- **January 31, 2023:** ICJ issues an interim ruling affirming jurisdiction to proceed with Ukraine's claims.
- **June 6-14, 2023:** ICJ conducts further hearings on the financing of terrorism and racial discrimination allegations.
- **February 2, 2024:** ICJ finds it has jurisdiction to hear Ukraine's claims and declares the case admissible.
- **September 9, 2024:** ICJ extends the time limit for Russia's counter-memorial.
- **Date of LMUN Conference:** The case is set to be heard before the Court.





## International and Regional Legal Framework

### 1. International Convention for the Suppression of the Financing of Terrorism (ICSFT)

#### Framework:

The ICSFT which was adopted by the United Nations in 1999 is an important international treaty which is aimed at disrupting the financial networks that uphold terrorist activities. The ICSFT requires states that are signatories to stop the provision or collection of funds that are intended to support (directly or indirectly) the acts of terrorism. It also makes it mandatory that there is international cooperation in the investigation and prosecution of those involved in the financing of terrorism. Under this treaty, states are mandated to avoid their territories from being used as conduits for terrorist financing and to also take the necessary legal measures against anyone whom goes against these provisions.

#### Relevance to Case:

Ukraine's argument is that Russia has violated the ICSFT by providing military, financial and also logistical support to armed separatists groups in the eastern Ukraine region. One of the most significant claims tied to this treaty is the grounding of Malaysia Airlines Flight MH17 in 2014, which Ukraine attributes to Russian-backed militants. If Russia is found to have directly or indirectly supported such activities, it would be in breach of the treaty's fundamental principle that states must actively work to prevent terrorism financing. The

ICJ's interpretation of this treaty in the case could set a precedent for how state responsibility in terrorism financing is determined under international law.


## **2. International Convention on the Elimination of All Forms of Racial Discrimination (CERD)**

### **Framework:**

The CERD, adopted in 1965, is a foundational treaty in international human rights law that mandates states eliminate racial discrimination in all its forms and promote equality among all racial and ethnic groups. It most importantly requires signatories to desist from policies that disadvantage certain ethnic communities and mandate positive measures to protect and promote minority rights. The treaty also allows disputes between states regarding racial discrimination to be brought before the ICJ if diplomatic resolution fails.

### **Relevance to the Case:**

Ukraine claims that since Russia's annexation of Crimea in 2014, the Russian government has engaged in policies that suppress the rights of Crimean Tatars and ethnic Ukrainians. These include restrictions on cultural institutions, limitations on education in native languages, and other measures allegedly aimed at disintegrating the identity of these communities. Ukraine's argument is that these actions amount to racial discrimination, violating Russia's obligations under CERD. The ruling of the ICJ on this matter will be



significant in determining whether such policies constitute racial discrimination under international law and what remedies, if any, are available for affected communities.

### **3. Article 36(1) of the ICJ Statute**

#### **Framework:**

Article 36(1) of the Statute of the International Court of Justice establishes the court's jurisdiction over legal disputes between states concerning treaty interpretation and obligations. It allows states to bring cases before the ICJ when a dispute arises under a treaty that includes a provision for ICJ adjudication. The ICJ's jurisdiction in a given case depends on whether the parties involved have consented to it through treaty commitments or other agreements.

#### **Relevance to the Case:**

Ukraine relies on Article 36(1) to bring its claims against Russia before the ICJ, arguing that both the ICSFT and CERD contain provisions permitting disputes to be referred to the court. Ukraine asserts that it attempted to resolve these issues diplomatically but was met with a lack of cooperation from Russia, making legal adjudication necessary. A key issue for the ICJ to determine is whether it has the jurisdiction to hear Ukraine's claims, which will influence the extent to which international treaties can be enforced in cases of state misconduct.

#### 4. European Convention on Human Rights (ECHR)

##### **Framework:**

The European Convention on Human Rights (ECHR), established in 1950 under the Council of Europe, is a cornerstone of human rights protection in Europe. It provides a legal framework for safeguarding fundamental rights, including the right to life (Article 2) and the prohibition of discrimination (Article 14). While the ECHR is the primary adjudicating body for ECHR violations, its principles are often referenced in broader international legal disputes.

##### **Relevance to the Case:**

Although it is not the main treaty in this case, the ECHR is relevant because both Ukraine and Russia are signatories, and Ukraine's claims align with ECHR protections. The alleged human rights violations in Crimea, such as restrictions on cultural and linguistic rights, raise concerns under Article 14 (prohibition of discrimination). Additionally, Russia's alleged support for separatist groups implicated in violence, including the MH17 incident, ties into Article 2 (right to life). Even though the ICJ is hearing this case and not the ECHR, Ukraine's reference to ECHR principles strengthens its argument that Russia's actions violate the widely accepted human rights norms.



## 5. Minsk Agreements (2014–2015)

### Framework:


The Minsk Agreements were a series of diplomatic accords brokered by the Organization for Security and Co-operation in Europe (OSCE) to stop conflict in eastern Ukraine. They outlined a ceasefire, withdrawal of heavy weaponry, prisoner exchanges, and constitutional reforms to grant autonomy to certain regions. The agreements were signed by representatives from Ukraine, Russia, and separatist groups, with support from France and Germany.

### Relevance to the Case:

Ukraine argues that Russia's continued military and logistical support for separatist groups directly undermines the Minsk Agreements, violating its commitments to de-escalation. By allegedly fueling the conflict instead of helping to resolve it, Russia's actions contribute to ongoing instability, further strengthening Ukraine's broader case against Russia's conduct in the region. While the Minsk Agreements are not legally binding in the same way as international treaties, their role in the peace process adds weight to Ukraine's argument that Russia has acted in bad faith.

## 6. United Nations General Assembly Resolution A/RES/68/262 (2014)

### Framework:



This UN General Assembly resolution, which was adopted in 2014, reaffirms Ukraine's sovereignty and territorial integrity, explicitly rejecting Russia's annexation of Crimea. While UN General Assembly resolutions are not legally binding, they serve as a statement of the international community's stance on key issues and influence diplomatic and legal discussions.

### **Relevance to the Case:**


Resolution A/RES/68/262 reinforces Ukraine's claim that Russia's annexation of Crimea is illegal under international law. Although the ICJ does not rule on General Assembly resolutions themselves, the resolution adds political legitimacy to Ukraine's position and reflects widespread international condemnation of Russia's actions. It also underscores the broader implications of this case beyond Ukraine and Russia, highlighting the global importance of upholding sovereignty and territorial integrity.

### **The Definition and Scope of Financing Terrorism and its Suppression**

The case of Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)<sup>25</sup> relates to the agreement

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<sup>25</sup> Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v Russian Federation), Judgement, I.C.J. Reports 2024, p. 1.




that state parties have to prevent and combat terrorism financing. This is codified in the 1999 International Convention for the Suppression of the Financing of Terrorism (Financing Convention), the primary international instrument defining and criminalising terrorism financing responding to the threat of global terrorism. The Convention established a legal framework to hold financiers of terrorism accountable and obligate states to take prevention and suppressive measures.

Financing Terrorism refers to the collection, movement, and use of assets intended to support terrorist activities. This includes providing financial support to individuals or groups involved in terrorism and facilitating the transfer of funds across borders to finance terrorist operations. It also entails funding training camps, acquiring weapons to support logistical operations, and failing to suppress the spread of extremist propaganda.

A person commits an offence under the Convention if they intentionally provide or collect funds to support terrorist acts, harm non-combatants, intimidate a State's population, or influence a government or international organisation to act or refrain from acting. It is an offence regardless of whether the funds are actually used for the intended acts. This includes attempting, assisting, organising, or contributing to these offences.<sup>26</sup> The Convention does not apply if the act lacks international elements as defined in it.

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<sup>26</sup> Article 2(5).



State parties must prevent and combat terrorist financing through groups with charitable, social, or cultural fronts or links to illegal activities like drug trafficking or arms smuggling.<sup>27</sup> They must also hold individuals or entities financing terrorism accountable under domestic criminal, civil, or administrative laws.<sup>28</sup> Funds for terrorism must be identified, frozen, and seized, and the forfeited funds may be shared between States as needed. Bank secrecy cannot justify non-cooperation. The Convention necessitates international cooperation through sharing information, assisting in investigations, and extraditing suspects<sup>29</sup> and the offences covered are considered extraditable between state parties both under existing treaties and the Convention.

In this case, Ukraine alleged that the Russian Federation violated the Convention for the Suppression of the Financing of Terrorism through involvement in acts of terrorism committed by illegal armed groups in Ukraine during the conflict from 2014 onwards, targeting Ukrainian civilians and communities. Ukraine alleged that the Russian Federation, through its agents and entities under its control, provided funds, weapons, and training to terrorist groups in Ukraine. They also stated that Russia failed to detect, freeze, or seize funds aiding such groups while neglecting to investigate, prosecute, or extradite those financing terrorism, and withholding necessary assistance to Ukraine in


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<sup>27</sup> Article 4.

<sup>28</sup> Article 5.

<sup>29</sup> Article 7(5).





criminal investigations; and not taking adequate measures to prevent terrorist financing by Russian actors.<sup>30</sup>

## Racial Discrimination and its Elimination

The case of Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)<sup>31</sup> raises the issue of Racial discrimination. The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) is a key international human rights treaty adopted by the United Nations General Assembly in 1965 and entered into force in 1969. Its primary goal is to eliminate racial discrimination and promote equality among all races, ensuring that individuals are not disadvantaged based on race, color, descent, or national or ethnic origin.<sup>32</sup>


Under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), both States and individuals/groups have avenues to address violations related to racial discrimination. This provision establishes mechanisms for

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<sup>30</sup> Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v Russian Federation), Judgement, I.C.J. Reports 2024, p. 15.

<sup>31</sup> The Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Judgment, I.C.J. Reports 2024.

<sup>32</sup> Convention on the Elimination of All Forms of Racial Discrimination, adopted by the United Nations General Assembly on December 21, 1965 through Resolution 2106.



dispute resolution and accountability.<sup>33</sup> In this case, Ukraine contended that Russia engaged in discriminatory practices against ethnic Ukrainians and Crimean Tatars in Crimea thereby violating the CERD.

Ukraine alleged that the Russian Federation systematically reduced education in the Ukrainian language in Crimea, adversely affecting the Ukrainian ethnic group. The ICJ found sufficient evidence supporting this claim, determining that such actions were intentionally discriminatory and violated CERD. The Court noted that the reduction in Ukrainian-language education was significant and systematic, constituting a breach of the Convention.<sup>34</sup> The Court found that the Russian Federation had enforced a significant and systematic reduction in education offered in the Ukrainian language in Crimea. This action was deemed intentionally discriminatory against the Ukrainian ethnic group, constituting a violation of CERD.<sup>35</sup>


Ukraine claimed that Russia banned the Mejlis, the self-governing body of the Crimean Tatars, thereby suppressing their cultural and political representation. Regarding this issue, the ICJ concluded that Ukraine did not provide sufficient evidence to prove that this

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<sup>33</sup> Convention on the Elimination of All Forms of Racial Discrimination, adopted by the United Nations General Assembly on December 21, 1965 through Resolution 2106.

<sup>34</sup> The Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Judgment, I.C.J. Reports 2024.

<sup>35</sup> The Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Judgment, I.C.J. Reports 2024.



action was racially motivated. The Court noted that the ban appeared to be linked more to political activities rather than ethnic discrimination, and thus did not fall under the violations addressed by CERD.

Ukraine also asserted that Crimean Tatar and ethnic Ukrainian activists faced persecution, including arbitrary arrests and restrictions on their freedoms, based on their ethnic identities.


Similarly, the Court found that Ukraine failed to substantiate claims that the persecution of Crimean Tatar and ethnic Ukrainian activists was based on racial discrimination. The ICJ emphasized the necessity of concrete evidence to establish a direct link between the alleged acts and racial discrimination as defined under CERD<sup>36</sup>.

This case underscores the challenges in proving racial discrimination under international law, particularly the necessity for concrete and compelling evidence to establish intent and linkage to racial or ethnic grounds. The ICJ's judgment highlights the importance of distinguishing between actions motivated by political considerations and those rooted in racial discrimination, as defined by CERD.

## Conclusion

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<sup>36</sup> The Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Judgment, I.C.J. Reports 2024.



The Ukraine v. Russian Federation case clearly shows how the International Convention for the Suppression of the Financing of Terrorism (ICSFT) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD) work together to address both security threats and systemic bias. By relying on the ICSFT, Ukraine challenges the link between state support and terrorist funding, affirming the Court's power to interpret and enforce international anti-terror rules. At the same time, the CERD claims draw attention to how discriminatory policies and language can both drive and worsen acts of violence, pressing the Court to balance protections against racial hatred with the need to stop support for armed groups.

The Court's provisional measures in this case, and its forthcoming judgment on the merits, will not only clarify when a state is responsible under each treaty but will also create lasting guidance on how security-focused conventions and human-rights obligations interact. Delegates should remember that this case shapes the ICJ's role as a place where different areas of law meet. Your decisions must, therefore, align the ICSFT's strict rules against terrorist financing with CERD's broad safeguards against racial discrimination, so that the Court's reasoning upholds both the rule of law and the protection of vulnerable groups.

### **Further Research**

1. What role does this case play in the broader conflict between Ukraine and Russia, particularly regarding the annexation of Crimea and the conflict in Eastern Ukraine?

2. What domestic or international policy changes could Ukraine adopt in response to the ICJ proceedings?
3. How is "terrorism financing" defined in international law, and how does it apply to the support allegedly provided by Russia to separatist groups in Eastern Ukraine?
4. How do the ICJ's past decisions influence the interpretation of the *International Convention for the Suppression of the Financing of Terrorism* and the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD)?

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## Topic Two: Advisory opinion on Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development


### I - Quote

*“The right to equality before courts and tribunals also ensures equality of arms. This means that the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant”*

- General Comment No. 32 issued by the Human Rights Committee

### Summary of Facts


In April 2010, the Court received a request for an advisory opinion from the International Fund for Agricultural Development (IFAD), a specialized agency of the United Nations, concerning a judgment of the Administrative Tribunal of the International Labour Organization (ILOAT). The Tribunal had ruled on 3rd February 2010 that IFAD must pay a former staff member of the Global Mechanism of the United Nations Convention to Combat Desertification, housed by IFAD, compensation equal to two years' salary, as well



as moral damages and costs, due to the abolishment of her post and the refusal to renew her contract.

In its Advisory Opinion on 1 February 2012, the Court first considered whether it had jurisdiction to address the request and whether it should exercise that jurisdiction. Regarding its jurisdiction, the Court referred to previous opinions and stated that its power to review an ILOAT judgment under Article XII of the ILOAT Statute was limited to two grounds: either the Tribunal had wrongly confirmed its jurisdiction, or the decision was flawed due to a fundamental procedural error. On whether it should reply to the request, the Court noted the difficulties in reviewing ILOAT judgments, particularly the unequal access to the Court, as only the employing body could bring the case. The Court stressed that the principle of equality should include equal access to appellate or similar remedies, unless justified by reasonable grounds. Although the existing review system did not fully support the modern principle of equality of access, the Court, unable to reform the system, decided it need not refuse to reply on those grounds.

To address the unequal position of the employing institution and its officials, the Court followed the practice of previous review requests. It decided that the President of the Fund should transmit any statement from Ms Saez García that she wished to bring to the Court's attention. It also decided that no oral proceedings would be held, as the Court's Statute does not allow individuals to appear in hearings in such cases. The Court



acknowledged the inequality of access but concluded that, given the circumstances and the steps it had taken to reduce this inequality, the reasons to refuse to issue an advisory opinion were not compelling enough to justify such a decision.

The Court examined and upheld the validity of the ILOAT judgment regarding Ms Saez García's employment contract. Specifically, the Court was asked to assess the ILOAT's competence to hear her complaint against the Fund. The Fund argued that Ms Saez García was a staff member of the Global Mechanism, not an organ of the Fund, and that the Tribunal's jurisdiction did not cover her complaint. The Court ruled that Ms Saez García was an official of the Fund, making the Tribunal competent *ratione personae* to hear her complaint. It also found that her complaints related to breaches of her terms of appointment or the Fund's staff regulations, as outlined in Article II, paragraph 5, of the Tribunal's Statute.

After concluding that the Tribunal was justified in asserting its jurisdiction *ratione personae* and *ratione materiae*, the Court decided it need not address the other questions raised by the Fund. These either sought the Court's opinion on the Tribunal's reasoning or judgment on the merits, areas where the Court has no review power, or were simply a repetition of the jurisdiction question, which the Court had already answered.



## Timeline of Events

- **March 2000:** Ms Saez García began her employment with IFAD, working within the Global Mechanism of the United Nations Convention to Combat Desertification.
- **December 2005:** Ms Saez García was informed that her position would be abolished due to budget cuts, and her contract would not be renewed upon its expiration in March 2006.
- **March 2006:** Ms. Saez García's contract officially expires.
- **May 2006:** Ms Saez García initiated a facilitation process to contest the non-renewal decision, which concluded without a settlement in May 2007.
- **May 10, 2007:** Ms. Saez García files a formal appeal with IFAD's Joint Appeals Board.
- **December 13, 2007:** The Joint Appeals Board recommended her reinstatement and that she be paid her lost salaries, allowances and entitlements.
- **April 4, 2008:** The President of IFAD rejected the Joint Appeals Board's recommendations.
- **July 2008:** Ms Saez García filed a complaint with the Administrative Tribunal of the International Labour Organization.
- **February 3, 2010:** ILOAT delivers Judgement No. 2867. Judgement invalidates IFAD's contested decision and grants remedies and compensation to the complaint.
- **April 2010:** The International Fund for Agriculture Development requests an advisory opinion from the Court.



- **April 29, 2010:** The international court of justice issues an order fixing time limits for submission of written statements and comments regarding the advisory opinion requested by IFAD.
- **May 4, 2010:** IFAD files an application to suspend the execution of judgement No: 2867.
- **May 5, 2010:** IFAD's governing council requests an advisory opinion from the ICJ. The request aims at providing clarification on ILOAT's jurisdiction over IFAD and the legal implications of judgment No. 2867.
- **August 26, 2010:** IFAD provides case materials to the Court.
- **June - November 2010:** Written submissions are provided and filed at the ICJ by IFAD, the complainant, and several member states.
- **October 1, 2010:** Government of Bolivia submits its written statement concerning the advisory opinion requests.
- **October 26, 2010:** General Council of IFAD submits the fund's written statement and the complainant's views.
- **October 28, 2010:** The Ambassador of the Plurinational state of the Kingdom of Bolivia to the Kingdom of Netherlands submitted a written statement of the Government of Bolivia.
- **January 25 - January 27, 2011:** Oral proceedings are held at the ICJ in The Hague. Legal representatives from IFAD, the complaint, and third party states presented

arguments about the jurisdiction of the tribunal and the enforceability of its decisions.

- **January 27, 2011:** Ms. Saez Garcia submits are written comments to the ICJ.
- **March 11, 2011:** IFAD submitted written comments.
- **January 25, 2012:** The advisory opinion is read out in a public sitting at the Peace Palace in The Hague.
- **February 1, 2012:** ICJ rules that the ILOAT had jurisdiction over the case, upholding ILOAT's previous judgment in favour of Ms Saez García.

### Questions Presented by the General Assembly

It is important to note that, in this instance, the request for an advisory opinion was made by IFAD's Executive Board, not the United Nations General Assembly<sup>37</sup>. The Executive Board of the International Fund for Agricultural Development (IFAD) initiated the request for an advisory opinion from the International Court of Justice (ICJ).

On April 22, 2010, during its ninety-ninth session, the Executive Board adopted a resolution challenging the validity of ILOAT Judgment No. 2867. Subsequently, on April 23, 2010, the President of IFAD submitted this request to the ICJ which received it on

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<sup>37</sup> Judgment No.2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development.( press release 2012).

April 26, 2010. This step was taken to clarify the legal framework regarding IFAD's obligations and responsibilities under international labour law.

The request was aimed at determining: Whether IFAD was subject to the jurisdiction of the ILOAT for the resolution of employment disputes and the legal consequences for IFAD if the ICJ affirmed ILOAT's authority over its staff and its decisions<sup>38</sup>.

The main questions brought before the court were as follows:

- Is the Administrative Tribunal of the International Labour Organization (ILOAT) competent to hear complaints filed against IFAD?

This question pertained to the jurisdiction of the ILOAT over complaints against IFAD, particularly regarding whether the tribunal's statutes and rules bound IFAD. This was the jurisdictional question.


- If the ILOAT is competent, is Judgment No. 2867 valid?

This involved evaluating whether the specific judgment issued by the ILOAT, addressing the complaint against IFAD, was consistent with applicable legal principles and procedures.

The ICJ delivered its advisory opinion on February 1, 2012, addressing the two questions posed by IFAD's Executive Board. The Court held that the ILOAT had jurisdiction over

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<sup>38</sup> ICJ Advisory Opinion on Judgment No. 2867 of the ILOAT (2012), [ICJ Reports 2012].



employment disputes involving IFAD staff members. It found that IFAD was subject to the jurisdiction of the ILOAT, as it had accepted the Tribunal's jurisdiction through its membership in the ILO<sup>39</sup>.

The ICJ clarified that if it affirmed the ILOAT's authority, IFAD would be bound by the Tribunal's decisions, and its staff members would have access to the ILOAT for the resolution of employment disputes<sup>40</sup>.

The ICJ's advisory opinion clarified the legal framework governing IFAD's obligations and responsibilities under international labor law. The opinion confirmed the ILOAT's jurisdiction over employment disputes involving IFAD staff members and outlined the implications for IFAD.

By initiating the request for an advisory opinion, IFAD asserted its responsibility to ensure compliance with international labor standards and maintain coherence with the broader United Nations legal framework. The ICJ's opinion would provide IFAD with a clear legal interpretation regarding its obligations and responsibilities under international law, helping to resolve disputes and establish precedent for future cases.

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<sup>39</sup> ICJ, Advisory Opinion, paragraph 23.

<sup>40</sup> ICJ, Advisory Opinion, paragraph 35.

## Jurisdiction of the ICJ


The International Court of Justice received a request from the International Fund for Agricultural Development to review a judgment by the Administrative Tribunal of the International Labour Organization. IFAD questioned whether some issues in its request were beyond the scope of Article XII of the ILOAT Statute. The ICJ clarified that its authority to provide advisory opinions stemmed from the United Nations Charter and its own Statute, not just Article XII of the ILOAT Statute. According to Article 65, paragraph 1, of the ICJ Statute, the Court can offer advisory opinions on any legal question at the request of an authorised body. The UN General Assembly and Security Council can request advisory opinions on any legal question under Article 96, paragraph 1, of the UN Charter.<sup>41</sup> Other UN organs and specialised agencies can also request advisory opinions on legal questions within their activities if authorised by the General Assembly under Article 96, paragraph 2.<sup>42</sup>

The General Assembly approved the Relationship Agreement between the UN and IFAD through resolution 32/107 on 15 December 1977. Article I of this Agreement recognises IFAD as a specialised agency under Articles 57 and 63 of the Charter and Article 8 of the

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<sup>41</sup> ICJ, Advisory Opinion, paragraph 21.

<sup>42</sup> See Judgments of the Administrative Tribunal of the ILO upon Complaints Made against UNESCO, Advisory Opinion (hereinafter the “1956 Advisory Opinion”), I.C.J. Reports 1956, pp. 83-84; see also Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982, pp. 333-334, para. 21).



Agreement establishing IFAD. Article XIII, paragraph 2, of the Relationship Agreement authorises IFAD to request advisory opinions from the ICJ on legal questions arising within its activities, excluding those concerning its relationships with the UN or other specialised agencies. Such requests can be made by IFAD's Governing Council or its Executive Board, with authorisation from the Governing Council. IFAD must inform the Economic and Social Council of any such request. The Relationship Agreement became effective on 15 December 1977, the date of its approval by the General Assembly. The ICJ noted that the records did not show any communication from IFAD informing the Economic and Social Council of its request for an advisory opinion.<sup>43</sup>


IFAD's Governing Council exercised its power under Article 6, Section 2(c) of the Agreement establishing IFAD to adopt resolution 77/2 on 16 December 1977. This authorised the Executive Board to exercise most of the Council's powers, except for certain specified ones. This power delegation was amended by resolution 86/XVIII on 26 January 1995 and took effect on 20 February 1997, but the power to request advisory opinions was not excluded.<sup>44</sup>

The Executive Board's resolution requesting an advisory opinion referred to Article XII of the Annex to the ILOAT Statute but did not mention the General Assembly's authorisation under Article 96, paragraph 2, of the Charter. The ICJ confirmed that such authorisation is

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<sup>43</sup> ICJ, Advisory Opinion, paragraph 22.

<sup>44</sup> ICJ, Advisory Opinion, paragraph 23.



required. The Court also emphasised that the ILO could not grant its organs or institutions the authority to challenge Tribunal decisions through advisory opinions.<sup>45</sup>

The requirements for requesting an advisory opinion are listed in Article 96, paragraph 2, of the Charter; 65, paragraph 1, of the ICJ Statute; and Article XIII, paragraph 2, of the Relationship Agreement. The ICJ used these provisions to determine that IFAD's request to review the judgment concerning its hosting of the Global Mechanism and the employment of Ms Saez García did raise legal questions within IFAD's activities. The authorisation in Article XIII, paragraph 2, excluded questions concerning the mutual relationships of IFAD and the UN or other specialised agencies. This exclusion reflects the Economic and Social Council's coordinating role under Chapter X of the Charter, as mentioned in the General Assembly's resolution 89 (I) of 11 December 1946. However, this exclusion did not prevent the ICJ from considering the relationships between IFAD and the Global Mechanism or the Conference of the Parties (COP), as they are not specialised agencies, provided these relationships are raised in the questions by IFAD.<sup>46</sup>

The ICJ concluded that under the relevant provisions of the Charter, its Statute, and the authorisation in the Relationship Agreement, IFAD had the power to request an advisory opinion on the validity of ILOAT's Judgment No. 2867. The Court also had jurisdiction to

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<sup>45</sup> ICJ, Advisory Opinion, paras. 24, 25.

<sup>46</sup> ICJ, Advisory Opinion, paragraph 26.

consider this request. The scope of this jurisdiction was however subject to the impact of Article XII of the Annex to the ILOAT Statute.<sup>47</sup>

Under Article VI, paragraph 1, of the ILOAT Statute, a judgment on an official's complaint is final and unappealable. However, Article XII allows the ILO and organisations to recognise the ILOAT's jurisdiction and challenge its decisions. The ICJ's opinion under these provisions is binding, as stated in Article XII, paragraph 2. This binding effect exceeds the usual scope of advisory opinions but does not alter the ICJ's operation, which remains governed by its Statute and Rules.<sup>48</sup>

## International and Regional Legal Framework

### 1. ILO Constitution - Article 37

#### Framework:


Article 37 of the ILO Constitution establishes the Administrative Tribunal of the International Labour Organization (ILOAT) as an independent judicial body to resolve disputes between international organizations and their staff. The tribunal's jurisdiction is open to international organizations that have recognized its authority, including the

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<sup>47</sup> ICJ, Advisory Opinion, paragraph 27.

<sup>48</sup> I.C.J. Reports 1956, p. 84, see also Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights; Advisory Opinion, I.C.J. Reports 1999 (I), pp. 76-77, paras. 24-25; ICJ, Advisory Opinion, paragraph 28.





International Fund for Agricultural Development (IFAD). By granting the tribunal jurisdiction, these organizations agree to subject their internal administrative decisions to external legal scrutiny. The tribunal operates based on its Statute, which outlines its procedures, scope, and principles of adjudication, such as due process, proportionality, and fairness<sup>49</sup>.

### **Relevance to the Case:**

In this case, Article 37's framework ensures IFAD staff have access to an impartial body to resolve grievances, addressing their unique position outside the reach of national courts. The tribunal's review of IFAD's actions against the complainant highlights its role in upholding procedural fairness. To be specific, it examined whether IFAD adhered to due process and proportionality in its administrative actions, ensuring that the rights of the complainant's were not infringed. This demonstrates how Article 37 safeguards justice and accountability in international organizations while maintaining their autonomy.


## **2. UN Charter - Article 101**

### **Framework:**

Article 101 of the UN Charter governs the management of staff in UN agencies and emphasizes principles of integrity, efficiency, and fairness. It mandates that recruitment and employment practices reflect the highest standards, ensuring impartiality and

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<sup>49</sup> International Labour Organization, 1946, Article 37.



transparency. UN organizations, including IFAD, are bound by these principles, which form the foundation of their internal administrative frameworks. This article also implies a responsibility to establish and implement fair mechanisms for handling disputes and complaints<sup>50</sup>.

### **Relevance to the Case:**

In the IFAD case, Article 101 underlines the organization's duty to ensure fairness in administrative processes, including dispute handling. The complainant alleged violations of these principles, particularly concerning fairness and justice in their treatment. The ILOAT's judgment evaluated whether IFAD's actions aligned with the obligations enshrined in Article 101, highlighting weaknesses in IFAD's internal dispute mechanisms. This emphasizes the need for UN agencies to make Article 101 operative in a way that strengthens institutional credibility and employee trust.


## **3. ILOAT Statute**

### **Framework:**

The Statute of the ILOAT defines its jurisdiction, procedural rules, and guiding principles. It grants the tribunal the authority to hear complaints from staff members of international organizations that recognize its jurisdiction. Central to its function are principles such as due process, proportionality, and justice. The Statute also outlines the tribunal's ability to

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<sup>50</sup> United Nations , 1945, Article 101.



annul administrative decisions, award compensation, and provide remedies when internal rules are misapplied.<sup>51</sup>

### **Relevance to the Case:**

The ILOAT Statute was instrumental in allowing the complainant to challenge IFAD's administrative actions. The tribunal's assessment focused on whether IFAD's decisions adhered to internal regulations and respected the principles outlined in the Statute. By ruling in favor of the complainant on certain aspects, the ILOAT emphasized its role in ensuring that internal rules are not manipulated to the detriment of staff. This decision not only provided redress to the individual but also set a precedent for fair governance within IFAD and other organizations under the tribunal's jurisdiction.

## **4. Principles of International Administrative Law**

### **Framework:**

International administrative law encompasses principles such as fairness, transparency, due process, and proportionality. These principles guide the internal governance of international organizations and ensure that administrative decisions respect employees' rights. They are designed to bridge the gap between the operational independence of international organizations and the protection of their staff, who often lack access to national legal systems<sup>52</sup>.

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<sup>51</sup> ILOAT, 1947

<sup>52</sup> C. F. Amerasinghe, 1994.



### **Relevance to the Case:**

In this case, these principles provided the foundation for the tribunal's analysis of IFAD's actions. The tribunal scrutinized whether IFAD had followed due process in addressing the complainant's grievances and whether the actions taken were in relation to the alleged issues. The judgment reaffirmed the importance of these principles in maintaining a fair balance between organizational autonomy and employee rights. It serves as a reminder to IFAD and similar organisations of their obligation to align internal policies with these extreme legal standards.

The legal frameworks of Article 37 of the ILO Constitution, Article 101 of the UN Charter, the ILOAT Statute, and international administrative law collectively emphasize the importance of justice, fairness, and accountability in managing staff-related disputes. Their application in this case shows the relevance of these frameworks in ensuring that international organizations, like IFAD, uphold employees' rights while maintaining their operational independence.

### **Role of the International System**

The ICJ is the United Nations' chief legal adviser. Article 96 (2) of the UN Charter provides that "Other organs of the United Nations and specialized agencies, which the General Assembly may so authorize, may also request advisory opinions of the Court on legal

questions arising within the scope of their activities.”<sup>53</sup> With this entrenchment of its advisory powers, it was able to address the case ILOAT and IFAD, and provide legal opinion based on fact and international law.

The ICJ has the role of interpreting the relationship between UN subsidiaries. Using the power conferred on it by Article XII of the Annex to the Statute of the ILOAT, it determined its role in reviewing the judgments of the administrative tribunal. It ensures there is no fundamental fault and there is competent jurisdiction.<sup>54</sup>

The ICJ also aims to protect fundamental human rights. While giving its advisory opinion in the case between ILOAT and IFAD, the ICJ considered whether the fundamental human rights of Ms Saez García had been breached because she was not allowed to appear in the ILOAT proceedings. It looked into equality of access to the court and equality before the proceedings in the court, and it expressed concern at the visible inequality.<sup>55</sup>

## **Employment Rights and Obligations in International Organisations**


The International Labour Organisation sets the standards that guide employment rights and obligations internationally. Employment rights are extremely important to keep a

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<sup>53</sup> International Court of Justice- Judgment No.2867 of the Administrative Tribunal of the International (April 26, 2010)

<sup>54</sup> Statute of the Administrative Tribunal of the International Labour Organization, 1946.

<sup>55</sup> ICJ Advisory Opinion on Judgment No. 2867 of the ILOAT, 2012.



working environment conducive, productive, and respectful, especially in today's globalised economy. Labour is not a commodity or an inanimate product that can be negotiated for the highest profit or the lowest price.<sup>56</sup>


Employment in international organisations operates within a unique legal framework that ensures both the autonomy of such entities and the rights of their employees. The organisations are governed by international law and are immune from national jurisdictions. A contract of employment entered into between an individual and an international organisation is a source of rights and duties for the parties to it.<sup>57</sup>

Employees in international organisations are entitled to several rights, including non-discrimination, due process, equal pay for equal work, freedom of association, and access to fair grievance mechanisms. For instance, the United Nations Staff Rules and Regulations provide comprehensive guidance on workplace equality and employee welfare for all staff members of the Secretariat. Similarly, conventions of the International Labour Organization (ILO), such as Convention No. 111 on Discrimination (Employment and Occupation) and Convention No. 100 on Equal Remuneration, underline the importance of safeguarding workers' rights globally.

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<sup>56</sup> Article I, Declaration concerning the aims and purposes of the International Labour Organisation (DECLARATION OF PHILADELPHIA)

<sup>57</sup> ICJ, Advisory Opinion, paragraph 76.



Employees must adhere to internal codes of conduct, professional ethics, and respect the principles of impartiality. The UN Ethics Office ensures compliance with ethical standards, integrity, and accountability. Employees are also bound by confidentiality agreements and are expected to avoid conflicts of interest, as outlined in organisational charters like the UN Charter and the UN Staff Regulations and Staff Rules.<sup>58</sup>

Employers in international organisations have a duty to provide a fair, safe, and equitable working environment for their employees. Employers are obligated to uphold principles of non-discrimination and equality in recruitment, promotion, and workplace practices. All forms of workplace discrimination based on race, gender, religion, or other protected grounds are prohibited.<sup>59</sup> They must also ensure a safe and healthy working environment for their employees, including physical safety from occupational hazards<sup>60</sup> and safety from harassment and abuse of authority. The UN has a zero-tolerance approach to workplace harassment.


Employers in international organisations must ensure fair compensation through salaries, benefits, and pensions, as outlined in frameworks like the UN's Compensation Package, which includes timely payment, healthcare, and retirement benefits that reflect employees' service. They must also establish clear and accessible grievance mechanisms,

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<sup>58</sup> Regulations 1.2(b), (g), (i), (m)

<sup>59</sup> International Labour Organization (ILO) Convention No. 111 on Discrimination (Employment and Occupation)

<sup>60</sup> ILO Convention No. 155 on Occupational Safety and Health underscores the obligation to prevent workplace hazards.



often through administrative tribunals such as the United Nations Dispute Tribunal or ILOAT. For instance, Judgment No. 4132<sup>61</sup> emphasised the importance of procedural fairness in disciplinary measures, underscoring employers' responsibility to act transparently and lawfully in addressing disputes.


### **Non-discrimination and Equal Treatment of Employees**

Non-discrimination and equal treatment are not just ideals but rather, they are the backbone of a fair and equitable workplace. For international organizations like the International Fund for Agricultural Development (IFAD), these principles carry even more weight because of their diverse and multicultural workforces. Non-discrimination ensures that employees are not unfairly treated based on factors such as gender, race, or nationality, while equal treatment guarantees that everyone has the same access to opportunities and protections. These principles are clearly shown in key global frameworks, such as the International Labour Organization (ILO) Convention No. 111 on Discrimination (Employment and Occupation) (1958), which explicitly discourages discriminatory practices, and Article 7 of the Universal Declaration of Human Rights (1948), which emphasizes equality before the law.

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<sup>61</sup> T. (No. 40) v. EPO (Application for review).






In the context of Judgment No. 2867 of the ILOAT, the tribunal's decision shows the importance of these principles. It delved into whether IFAD's administrative actions aligned with its internal rules and broader international labor standards. For example, when decisions are made about promotions, disciplinary actions, or benefits, they must be rooted in fairness and transparency. Failure to follow these principles can be interpreted as discriminatory and risks breaking trust in the organization's processes. The tribunal's role here was crucial in reinforcing that IFAD, like other international organizations, must treat all employees equally while maintaining consistency in the application of its policies.<sup>62</sup>

The interesting thing is that discrimination is not always obvious, and it often hides in policies or practices that seem neutral but disproportionately affect certain groups. For instance, rigid work schedules. They might unintentionally be a disadvantage to employees with caregiving responsibilities, like parents or those looking after elderly relatives.<sup>63</sup> Similarly, unclear promotion criteria could leave out employees who aren't part of informal networks within the organization, adversely affecting minorities or those new to the system. These examples highlight the need for organizations like IFAD to go beyond surface-level equality and dig deeper into creating systems that genuinely level the playing field.

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<sup>62</sup> ILOAT judgement No. 2867, 2009.

<sup>63</sup> ILO report on work-life balance, 2017.



The ILOAT has repeatedly reinforced this idea in its rulings. It has held organizations accountable for ensuring that their rules are applied consistently and fairly. For instance, in Judgment No. 2867, the tribunal stressed that any action impacting employees' careers must be based on clear, objective criteria. This isn't just about following procedure but it's about safeguarding employees from arbitrary decisions that could harm their professional growth. These precedents are essential not just for resolving individual disputes but also for shaping how international organizations structure their policies to promote fairness and inclusivity.<sup>64</sup>

For IFAD, the principles of non-discrimination and equal treatment are about creating workplaces where everyone feels valued and respected and it's more than just a legal obligation; it's also about building a culture of trust and inclusivity that benefits both employees and the organization as a whole. By embedding these principles into its practices, IFAD and other international organizations not only comply with global standards but also set an example for fairness and equity in the workforce. This isn't just about doing what's required but also about doing what's right.<sup>65</sup>


### **Procedural Guarantees for Staff Members, Including The Right to A Fair Hearing**

Procedural guarantees for staff members, including the right to a fair hearing, ensure that individuals are treated fairly and equitably in decisions affecting their employment,

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<sup>64</sup> ILOAT Legal Principles and Case Law, 2019.

<sup>65</sup> UN Charter, 1945; Universal Declaration of Human Rights, 1948.



particularly in cases of disciplinary action or disputes. These guarantees often align with principles of natural justice and due process. Staff members must be informed of the allegations or issues raised against them in clear, detailed terms. They must also have the opportunity to present their case, explain their actions, and provide evidence or call witnesses.


The hearing or decision-making process should be conducted by an unbiased and impartial authority, free from conflicts of interest. The staff member should have access to all evidence or documentation being used in the decision-making process. These guarantees protect both the staff member's rights and the organization's integrity by fostering transparency, accountability, and fairness in the workplace.

In the case, the complainant, employed as a Programme Manager within the Global Mechanism hosted by IFAD, was informed that her contract would not be renewed due to the abolition of her post for budgetary reasons. She contested this decision, alleging it was tainted by abuse of authority and violated procedural safeguards provided in IFAD's Staff Rules and Regulations<sup>66</sup> The Tribunal found that the Managing Director of the GM lacked the authority to abolish the complainant's post without the requisite approval from the President of IFAD. This unilateral decision was deemed an abuse of authority, undermining the procedural integrity expected in employment decisions<sup>67</sup>.

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<sup>66</sup> International Fund for Agricultural Development, Staff Rules and Regulations, 2012.

<sup>67</sup> ICJ Advisory Opinion on Judgment No. 2867 of the ILOAT (2012), [ICJ Reports 2012].



IFAD's Personnel Policies Manual outlined specific procedures for handling redundancies, including exploring possibilities for contract renewal, relocation, or additional training for affected staff. The Tribunal noted that these procedures were not followed, indicating a breach of the complainant's procedural rights. The Tribunal emphasized the importance of procedural guarantees in ensuring that staff members are treated fairly. The Tribunal stated that "the right to a fair hearing is a fundamental principle of administrative law."<sup>68</sup>

The Tribunal held that IFAD had breached its duty to provide the complainant with a fair hearing. The complainant had not been given adequate opportunity to respond to the allegations against them, and the decision to terminate their contract had been taken without proper consideration of their views.<sup>69</sup> The Tribunal also emphasized the importance of a thorough investigation into allegations against staff members. In this case, IFAD had failed to conduct a proper investigation into the allegations against the complainant, which had led to a flawed decision-making process.<sup>70</sup>


The Tribunal's judgment in this case highlights the importance of procedural guarantees in ensuring that staff members are treated fairly. The right to a fair hearing, including the

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<sup>68</sup> Judgment No. 2867, Administrative Tribunal of the International Labour Organization, 2012.

<sup>69</sup> Judgment No. 2867, paragraphs 11-12.

<sup>70</sup> Judgment No. 2867, paragraphs 14-15.



right to be heard and the duty to investigate, are fundamental principles of administrative law that must be respected by international organisations.

### **Strengthening Dispute Resolution Mechanisms for Staff in International Organisations**

The UN has existing mechanisms for resolving disputes among staff since immunity of international organisations limits staff access to national courts. These dispute resolution mechanisms are vital to ensure fairness, justice, and the rule of law in resolving employment disputes. First is the UN Ombudsman. The ombudsman and her team of mediators receive and address complaints from all UN offices; however, the ombudsman cannot issue formal decisions; however, they may direct the complainant to seek more formal remedies.<sup>71</sup>

The second is the UN Dispute Tribunal (UNDT), the first level of formal dispute resolution in the UN,<sup>72</sup> and the UN Appeals Tribunal (UNAT), the court where appeals from the UNDT go.<sup>73</sup> Another major contributor is the ILO, a subsidiary of the UN specializing in international labour standards. It has the ILOAT, an administrative tribunal that decides on employment-related claims.<sup>74</sup> On the other hand, it has the ethics officer responsible for training, passing information on ethics to staff, and reviewing retaliation complaints.<sup>75</sup>

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<sup>71</sup> U.N. Ombudsman and Mediation Services, “Frequently Asked Questions”.

<sup>72</sup> Statute of the U.N. Dispute Tribunal, 2008, art. I.

<sup>73</sup> Statute of the U.N. Appeals Tribunal, 2008, art. I.

<sup>74</sup> Statute of the Administrative Tribunal of the ILO, 1946, art. III.

<sup>75</sup> International Labour Office, Office Directive IGS No. 76.



Underpinning all these bodies is the ICJ, which has the power to review their decisions, where it is referred to.<sup>76</sup> Particularly for the ILOAT which has specific provisions providing for the power of the ICJ to review its decisions where there has been impropriety in its procedures.

A current challenge faced in employment disputes is the immunity that the international organisations enjoy from national courts which can create an imbalance between an organisation and its employees, although necessary for their independent functionality.<sup>77</sup> Many national courts have also regarded such an absolute immunity of international organisations as a requirement under customary international law.<sup>78</sup> There was no valid reason why an organisation should be subject to the law of the state in which its headquarters was located, especially since its staff was of widely different nationalities.<sup>79</sup> There are other concerning lack of procedural safeguards of these internal justice systems since the adjudicators are not independent and bias cannot fully be addressed this way. Restructuring internal tribunals to enhance independence and transparency, integrating ADR methods for flexible, cost-effective solutions, and establishing external oversight like ombudsmen are all ways to strengthen the current systems to boost accountability and staff trust.


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<sup>76</sup> An example is Annex to the Statute of the ILOAT, 1946, art. XII.

<sup>77</sup> Reinisch, A., & Weber, U., “In the Shadow of Waite and Kennedy: The Jurisdictional Immunity of International Organisations, the Individual's Right of Access to the Courts and Administrative Tribunals as Alternative Means of Dispute Settlement” (2004) *International Organisations Law Review*, 1(1), 59–110.

<sup>78</sup> Schermers/Blokke, *International Institutional Law* (3rd ed., 1995) 1007

<sup>79</sup> Amerasinghe, C. F., *Principles of the Institutional Law of International Organizations*, 2nd ed. (Cambridge University Press: 2005) p. 271



Strengthening these dispute resolution mechanisms will foster better workplace relations, reduce organisational liability, and reinforce the legitimacy of international organisations. It will also align these institutions with the broader principles of justice and equality under the law, and set a standard for global governance practices.

## **Conclusion**

The Advisory Opinion on Judgment No. 2867 clearly confirmed the Court's power under Article 96 of the UN Charter and Article XII of the ILOAT Statute. It showed that IFAD had properly accepted the ILOAT's authority and that its staff have real access to administrative justice. By upholding Ms Saez García's right to a fair hearing and defining how an organisation may consent to tribunal review, the Court reinforced the basic principles of equal treatment and fair procedure in international bodies.

Looking beyond this decision, the opinion establishes an important precedent on balancing organisational immunity with staff rights. It stresses the need for clear legal authorisation when international bodies grant jurisdiction and points to ways of improving internal dispute-resolution processes. Judges handling similar cases should keep in mind how the Court combined administrative-law rules with wider UN goals, ensuring that organisational unity does not come at the cost of individual protections.

## Further Research

1. How does the ILOAT function in resolving disputes between international organizations and their employees? What precedent or legal framework was applied by the Tribunal in rendering its judgment?
  2. Are there recommendations for reforming the ILOAT process or IFAD's employment policies based on this judgment?
  3. How does the outcome of this case compare with other significant ILOAT judgments?
- Attention should be made to the following: jurisdiction, adherence to internal laws, procedural fairness, and precedential value.

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