IARMJ report

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INTERNATIONAL ASSOCIATION OF REFUGEE AND MIGRATION JUDGES

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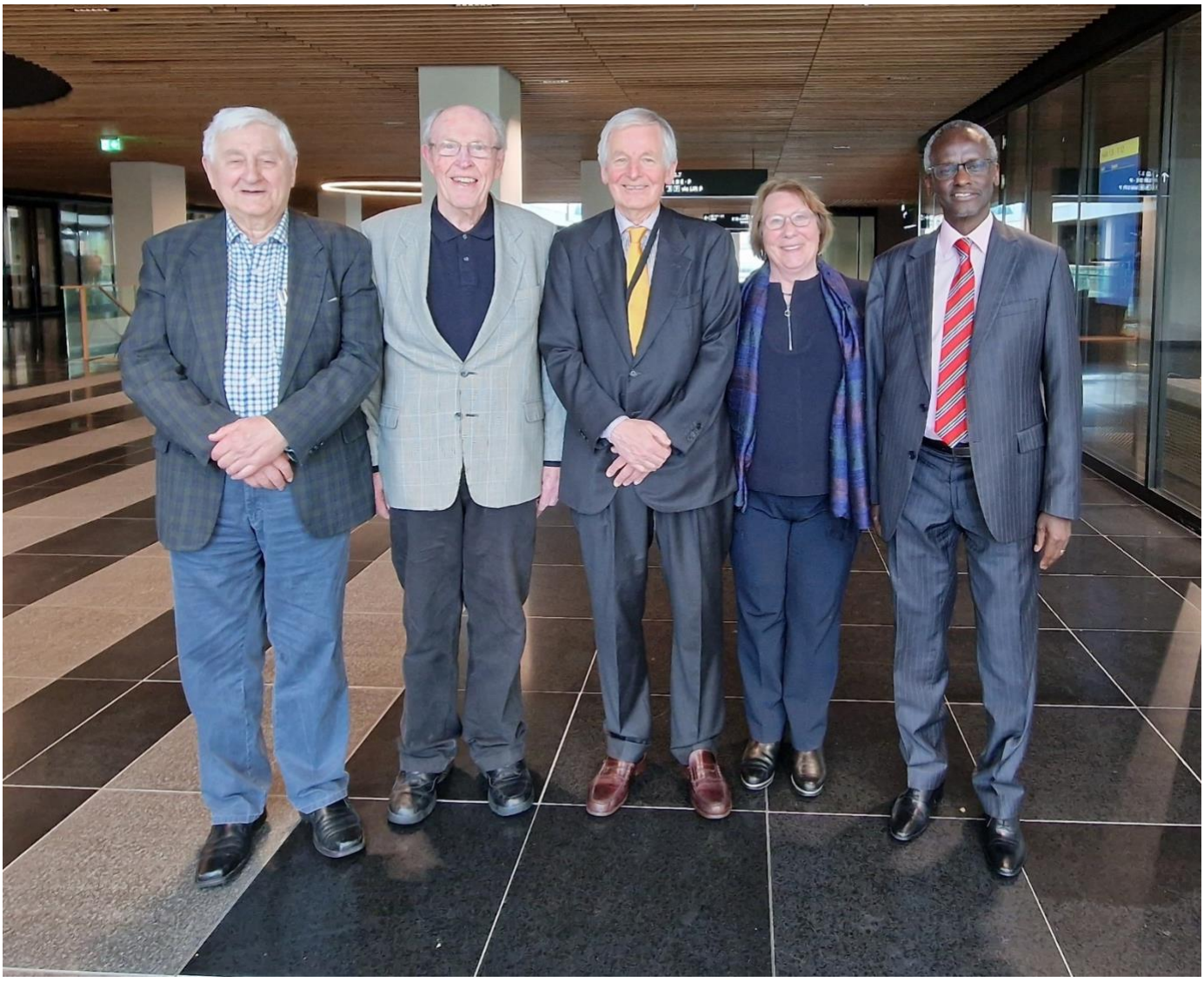
THE HAGUE CONFERENCE, MAY 2023



Five of the IARMJ's six Presidents together, and in order of service…

Geoffrey Care (1995-2002)
Allan Mackey (2002-2005)
Tony North (2005-2009) (absent)
Sebastiaan de Groot (2009-2014)
Katelijne Declerck (2014-2020)
Isaac Lenaola (2020-present)

Dear colleagues and friends,

Martin Treadwell
Co-Editor

We talk a lot about judicial well-being these days (and so we should), but if there was one piece of advice that I wish I could give to myself as a young judge all those years ago (yes, ok, last century), it wouldn't be advice about coping with traumatic evidence, or the weight of making decisions that impact claimants adversely, or strategies for dealing with the production line of work that never ends (I hear people call this 'the churn', but a churn goes round and round – this is just a constant stream of new stuff that never lets up). These are all important things for which we all need resilience. But the one piece of advice I would give to younger me, from which so much else would flow, would be this: Nothing will cause you more stress and anguish, to the point that you dread going to work each day, than having stuck, very overdue decisions to write.

Those files corrode your spirit. They bleed you of any enjoyment you might otherwise get out of your work. Eventually, they come to sit in the corner of your office, looming over each day like the eye of Sauron over Mordor, feeding on your inner misery. In time, you reach a point at which even thinking about the files makes you feel ill. The idea of opening one is traumatising in itself.

I would tell my younger self three things:

1. You need to ensure that decisions don't get stuck/overdue in the first place.
2. If they do get stuck/overdue, you need to know how to get them unstuck.
3. No-one is going to come to your rescue about 1 and 2.

How do you prevent files getting stuck? The key is to start writing immediately after the hearing. There will never be another moment at which the whole case is so well fixed in your brain. Even if you can only get down the facts, do that straight away. Arrange your work so as to have a clear window after each hearing in which to get down a first, rough draft (if scheduling isn't in your control, talk to those in charge). Resist, as best you can, requests for extensions of time to lodge further documents/submissions (and, even if you grant an extension, start writing the facts as far as you can anyway). Shut your door.

What if, I hear younger me say, I'm unsure about the outcome? Have a system that enables to you talk to a colleague. It is not a threat to judicial independence. To get a colleague's advice straight after the hearing will keep you on that critical path to a first draft. Don 't let the colleague go until you have a pathway to an outcome.

And how (younger me says) do I get a stuck file unstuck? Again, the answer is to take it to a colleague – someone safe, who will be empathetic and will help you to get the file moving again. And the sooner you do this, and get into the habit of doing it, the sooner that growing eye of Sauron is extinguished.

Some of us are naturally brilliant at these things, and will wonder why on earth I'm stating the obvious. For the rest of us, you might want to reflect on this and, especially if you are still your younger self, take it on board from an old hand.

Martin Treadwell

Co-Editor

HABARI KUTOKA NAIROBI

Update from the President…

"No one puts their children on a boat unless the water is safer than the land."

- a quote on World Refugee Day

Greetings from Nairobi, Kenya.

It is truly an honour to address you through our Newsletter after the successful completion of our Global Conference at The Hague, Netherlands. I would like to extend my deepest gratitude to all the participants, speakers, and sponsors for making that event a huge success. The Local Organising Committee performed exceptionally well despite the usual challenges of organising a huge Conference.

The attendance was impressive and, coming soon after Covid had relaxed its hold on the world, seeing each other in person after almost three years was most invigorating.

During the Conference, we had the opportunity to share knowledge, exchange ideas, and discuss emerging trends in refugee and migration law. It was a truly enriching experience for me personally, and I'm sure that all of you present felt the same. The Conference also enabled us to review and enhance our knowledge and skills to strengthen our efforts towards the execution of our mandate whatever our position in the refugee law and asylum space.

As we all know, June 20th is celebrated as World Refugee Day. This day is an opportunity for us to stand in solidarity with refugees and raise awareness about the challenges and adversities they face.

The Theme for this year's World Refugee Day was "Together we heal, learn and shine", emphasising the healing power of unity, especially after the challenging three or so years we have all faced due to the ongoing pandemic.

We must continue to work together and support the refugees and migrants who have made significant contributions in many parts of the world. It is our collective duty to ensure that they are able to live in harmony and dignity, free from discrimination and bias.

As we focus on the next phase of our Association's activities leading to the Chapter Conferences next year and the Global Conference in Kenya within 2025, I implore us to rededicate our commitment to our ideals and to remain focused on making it the judicial voice in all matters affecting us as well as those that we serve.

Thank you!

Isaac Lenaola

President, IARMJ

"Because, my friends, my good friend is he who is with me when the storms are beating, when I am hungry, when I have no money, when everybody is spitting on me, when I am in jail; and then, when a man comes to me and says, "I am with you; have courage; I'm your friend!" that man is my brother — that man is two hundred per cent because that man is not a sunshine friend."

"First they ignore you. Then they ridicule you. And then they attack you and want to burn you. And then they build monuments to you."

Excerpts from a speech by the lawyer and trade union advocate **Nicholas Klein** (1884-1951), to the meeting of the Amalgamated Clothing Workers of America, during the Fourth Session in Baltimore, on 15 May 1918.

REPORT ON THE HAGUE CONFERENCE

Members would need to have been trapped in a lead mine in the Sierra Nevada for the past six months, not to know that, on 8-12 May 2023, the Association held its 13th conference at the New Babylon Conference Centre in The Hague. Huge thanks are due to the Organising Committee, who brought everything together so well.

The conference began with a day and a half of advanced workshops. Presentations included exclusions issues, credibility assessments, trafficking, unreturnability, advanced hearing room skills, political opinion and LGBTQI+ claims, and family reunification. The highlight was, perhaps, Hilary Evans Cameron's paper on credibility – delivered by AVL with all of Hilary's usual clarity and insight, notwithstanding that it was 5.15am in Toronto!

The workshop in full swing

The workshops were followed by an afternoon visit to the International Criminal Court, sited about 15 minutes away. We were greeted with a presentation by two of the Court's administrative officers, who were knowledgeable and interesting. It would have been nice, perhaps, to have met with at least one of the judges but it may have been logistically difficult.

The formal photo is always nice...

but the next one, off-guard, is always more fun.

His Excellency Heinz Walker-Nederkoorn, Ambassador of Switzerland to the Netherlands

The next morning, the conference got underway with strong keynote presentations, followed by Piotr Hofmański, President of the International Criminal Court and Renate Winter, Judge of the Residual Special Court for Sierra Leone. Renate's presentation in particular, touching on the enormity of the challenge of judicial office in an arena characterised by brutality and acts of human cruelty beyond description, was particularly powerful and left many in the audience with a new sense of perspective about their own work.

That evening, we were fortunate to be invited to a reception, hosted by the Dutch Council of State. Not a little Dutch beer and French wine was disposed of. The reception was held in the courtyard of the oldest surviving synagogue in The Hague. Those of us who ventured inside were treated to a fascinating glimpse into the lives of the Dutch Jewish community and their 700-year history there. We viewed 500-year-old Torah scrolls, housed in a building that, somehow, survived the worst of humanity's barbarism in WW2. It was sobering to hear that there are only some 230 Jewish families in The Hague now and the synagogue faces an uncertain future.

Friends reunited again…

Day 2 of the conference was highlighted by the well-received breakout sessions, which again proved extremely popular. The women disappeared for the traditional Women Judges' Lunch, leaving the men to hang around morosely, feeling abandoned. In the evening, we attended the Conference Dinner, held in a delightful modern art gallery. The unusual, sympathetic lighting made everyone look 10 years younger and it was a welcome opportunity to honour past stalwarts of the Association, including Geoffrey Care, Allan Mackey, Sebastiaan de Groot and Ahmed Arbee. Presentations were made.

Geoffrey serenading Ahmed

Ahmed and the one about the nun at the Pearly Gates...

Esteban Lemus Laporte, Jolien Schukking and Peter Arnoldus

Day 3 of the conference wrapped up at lunchtime and was followed by the Association's AGM and the first meeting of the new Supervisory Council, to which Judith Gleeson was unanimously re-elected as Chair. The Council farewelled Russel Zinn who is retiring and welcomed new members Allan Mackey, Chiara Piras, Thomas Besson, Esteban Lemus Laporte and Mathieu Herondart. Shirzad Ahmed was welcomed as the new President of the Americas Chapter, replacing Esteban Lemus Laporte whose huge contribution to the IARMJ was acknowledged.

In the afternoon, delegates went on a cultural tour of The Hague, offered by the Hague Convention Bureau, connected to the Den Haag municipality.

In the evening of the last day, the Executive held its traditional informal dinner, to which Council members and dignitaries were invited. The dinner was held at the spectacular Societeit De Witte, a private club founded in 1782. The general consensus, as can be seen here, was that the conference had been a great success.

As to the next World Conference, though, expect the scenery to be a little different…!

MINUTES OF THE 13th GENERAL MEETING

HELD AT THE HAGUE CONFERENCE CENTRE, NEW BABYLON, THE HAGUE

12 May 2023

Present: Isaac Lenaola (Chair), Catherine Koutsopoulou, Katelijne Declerck, Martin Treadwell, Esteban Lemus Laporte, Sean Baker, Bostjan Zalar, Dunstan Mlambo, Sebastiaan de Groot and attendees of the 13th World Conference

Apologies: None received

1. Matters Arising

Martin gave a brief summary of the Minutes of the 12th General Meeting. There were no matters arising.

2. President's Report

Isaac reported on the effects of COVID-19 on the activities of the Association, noting that its Chapters had only resumed in-person regional conferences in 2022. Asia Pacific, Europe and Africa had been successful in this, though the Americas had had to defer this, promising to hold one before the next World Conference. Isaac reported that the Executive had met online regularly during COVID-19 and that much of the conference had needed to be organised in this way.

Isaac also reported that high level, bilateral meetings were held regularly with UNHCR and gave his thanks to Carole Dahan for her unstinting commitment to the relationship. The next such meeting in scheduled for June 2023.

Isaac also noted with thanks the strong, ongoing support from EUAA for both the Europe and Africa chapters.

Isaac had particular thanks for the Swiss government whose support for the Association and the conference, facilitated by Chiara Piras, had been significant. It is the responsibility of the Association to ensure that its relationship with the Swiss thrives into the future.

Isaac spoke briefly to the accounts, noting that we receive US$20,000 from UNHCR, who also provides support to the Europe Chapter. Our bank account is in the Netherlands and, with John's death, it will be important to find a Treasurer who understands Dutch law and banking regulations, as well as having an appropriate position with the Dutch judiciary for oversight of the Association's office, which the Dutch courts kindly continue to fund.

As to the Association's office, Isaac noted the departure of Melany Cadogan as office manager and gave thanks to Liesbeth van de Meeberg for returning to that role. Lisette continues to assist us with the website. Isaac asked all conference speakers to provide their papers/presentations to the Secretary for publication on the website, and reminded those 'not yet formal' members of the Association that they can apply for membership online.

Isaac explained that the Executive (aka, the Management Board) reports annually to the Supervisory Council, and had done so two weeks before the conference. The Council had given the Executive a "clean bill of health".

One of the challenges of COVID-19 has been our limited travel/contact and Isaac noted the vital role played by the IARMJ's newsletter. It had needed to be regular and informative and the three co-editors had achieved this.

Isaac also thanked Hugo Storey, Katelijne Declerck and Michael Hoppe for their work on the proposed Global Judicial Analysis, and expressed himself comfortable with the proposal. He invited the Association to see how far its members could make it a success. Hugo then proposed the following resolution:

> "That the conference authorises the Association's Management Board to establish an Editorial Board, whose function will be to decide which materials produced by working parties or other work groups of the Association can be published as 'IARMJ publications'."

The resolution was passed unanimously.

3. Supervisory Council Report

Judith Gleeson explained the functions of the Council, including its supervisory role over the Management Board, approval of the appointment of Chapter Presidents, approval of any borrowing and approval of any change to the Association's secretariat. Judith confirmed the Council's approval of the appointment of Sebastiaan de Groot as treasurer ad hoc, following the untimely death of John Bouwman.

4. Treasurer's Report

Sebastiaan de Groot advised that John Bouwman was Treasurer until recently but, since his death, Sebastiaan has filled the role. The Association's auditors have prepared the accounts, which are available for inspection at any time with the Office Manager, Liesbeth van de Meeberg. The Association is in a reasonably stable situation. The Costa Rica Conference incurred a slight loss but the current Conference should break even. Contributions from UNHCR and the Dutch and Swiss governments have been important and the Association is keen to lift membership, and to better meet the costs of running the Association and hosting conferences.

5. 14th World Conference

Isaac proposed a resolution that the Association should hold its next World Conference in the Republic of Kenya or, if necessary, at a venue to be chosen by the Management Board. The resolution was adopted unanimously.

Sebastiaan de Groot noted that the Management Board should move promptly to draw up a draft budget for the next conference. There was general agreement with this.

6. Elections for the 13th Management Board

Isaac noted that, as regards the election of the President, Vice President and Secretary, the present incumbents were all willing to stand again. There being no other nominations for those roles:

- Isaac Lenaola was elected unanimously as President;
- Catherine Koutsopoulou was elected unanimously as Vice President; and
- Martin Treadwell was elected unanimously as Secretary.

All three expressed their thanks and noted the honour and privilege of serving again.

There being no other nominations for the position of Treasurer, and Sebastiaan de Groot indicating his willingness to continue in that role pro tem, Sebastiaan de Groot was confirmed as Treasurer.[1]

7. AOB

There being no other business, the meeting closed.

Martin Treadwell

Secretary, IARMJ

[1] The balance of the Management Board comprises the Chapter Presidents, elected by their chapters under their own constitutions. Dunstan Mlambo (Africa), Sean Baker (Asia Pacific) and Bostjan Zalar (Europe) continue in office. We also welcome Shirzad Ahmed who replaces our good friend Esteban Lemus Laporte as President of the Americas Chapter.

NEWS FROM THE CHAPTERS

In each issue, we report on developments and issues affecting the four chapters of the IARMJ

AFRICA CHAPTER

Judge President Dunstan Mlambo

Dear Colleagues,

It is apposite to congratulate our President, Justice Isaac Lenaola and the World Conference Organising Team, for arranging a successful conference in The Hague, in May 2023. Even though 2023 proved difficult from a fund-raising perspective, our Organising Team pulled off a spectacular conference. In all respects, it was significant in featuring topical developments in refugee and migration law. It was a conference that told us, in no uncertain terms, that refugee and migration law is in flux and that we should keep our fingers on the pulse, so to speak.

The African Chapter was well represented in the World Conference, despite our struggle with funding. I must thank UNHCR and the EUAA for once more ensuring that a sizeable number of Judges from each sub regional chapter, was funded to attend the World Conference. In the case of the EUAA, it was instrumental in funding a big number of Judges from North Africa and Niger. We also appreciate the EUAA's commitment to the professional development of judges in those two regions, in refugee law. We will continue our cooperation with the EUAA in its envisaged projects in North Africa and Niger.

In our Chapter meeting there, we initiated the conversation regarding our next Regional Chapter conference in 2024, with particular focus on the venue. We firmed up a resolution that the Regional Chapter conference be convened in North Africa, ie Egypt or Tunisia. Discussions are ongoing as we speak to firm up the arrangement, and we should be able to finalise that part in the next two months.

We are also exploring convening a small regional seminar in West Africa, targeting French speaking judges, to be specific. In the event that we are successful in holding this seminar, the idea is to create enough awareness and interest in French speaking West Africa to pave the way for our next Regional Conference in that region in 2026.

In South Africa, we have just concluded a very successful Southern Africa Judicial Education Institute (SAJEI) training programme in Hermanus, Western Cape. I was allocated a slot, as Africa Chapter President, to present on refugee law. We had an attendance of over 100 Judges from South Africa, Malawi and Botswana. My presentation covered the most recent jurisprudence from the South African Constitutional Court, featuring *non refoulement*. This emerging jurisprudence has generated much interest, in the country and regionally, due to the unabating economic migration directed at this country. SAJEI has agreed that it will make refugee law a permanent part of its programme in its future offerings. This is great news as a lot of South African judges are called upon, on an increasing scale, to preside over refugee law related cases.

I am also involved in discussions with the South African Department of Home Affairs and UNHCR's office in South Africa, to see if we can host a refugee law conference that involves South African role players. This discussion is long overdue in view of the centrality and interest that is generated about refugee cases in this country especially from the Constitutional Court. Two weeks ago, a Full Court in the Gauteng Division, in three judgements, ruled offside the decision of the Minister of Home Affairs in terminating the Zimbabwe Exemption permits (ZEP) issued to some one hundred and seventy-eight thousand Zimbabweans who have lived in South Africa for some 10 years. In

another development, in fact in the most recent judgment coming out of the Constitutional Court, *A v Minister of Home Affairs and Others*, the Constitutional Court has deviated somewhat from the stance it adopted in *Ruta v Minister of Home Affairs* and *Abore v Minister of Home Affairs*, in which it ruled that the detention of illegal foreigners, who had delayed applying for asylum, no matter how long, was illegal and violated the principle of *non refoulement*. In *A v Minister of Home Affairs and Others*, the Constitutional Court affirmed amendments to the Refugees Act and ruled that, despite an expression of an intention to apply for asylum, the detention of illegal foreigners aimed at establishing good cause for their illegal entry into the country and their delay to apply for asylum, did not negatively impact the principle of *non refoulement*.[2]

Lastly, I confirm that the training programme run by our Centre of Excellence at the University of Cape Town is progressing smoothly. We hope to make progress in the establishment of French and Portuguese Centres of Excellence.

Mlambo JP

President, Africa Chapter

AMERICAS CHAPTER

Dear Colleagues,

Shirzad Ahmed

This is my first report as President of the Americas Chapter, and it was my first time attending the IAMRJ World Conference in The Hague. I was delighted to take part in the conference to address the association on the topic of gangs and organized crime as agents of persecution in the Americas context, along with my colleague Judge Rintoul, and to meet jurists, educators, and staff around the globe.

I would like to take this opportunity to thank my predecessors in this role: my colleague and friend Justice Russell Zinn and my colleague Justice Esteban Lemus-Laporte. Both jurists continue to be part of the organization.

The Americas Chapter of the IARMJ was relaunched at the 2018 Washington Regional Conference and the 2020 World Conference in San Jose, Costa Rica. The Chapter currently includes jurists from Canada, the United States, Costa Rica, the Dominican Republic, Peru and Brazil. During the COVID-19 pandemic, the Chapter held academic webinars for its members that allowed jurists and scholars to remain connected, from universities in Peru, Costa Rica, Mexico, Guatemala, and the Inter-American Institute of Human Rights.

In my address to the association in May, I briefly discussed the Safe Third Country Agreement ("STCA"). This report provides a summary on the court challenge concerning the STCA, in light of a recent development in the case by the Supreme Court of Canada (the "Supreme Court").

[2] For an account of *A v Minister of Home Affairs*, and a link to the decision, see the case law section later in this bulletin.

Background

The STCA is an agreement between Canada and the United States ("US") that claims to better manage the flow of asylum seekers at the shared land border, entered into force in December 2004. In effect, asylum seekers crossing into one of the two countries at the border between Canada and the United States are prevented from claiming asylum there, as they are required to make a claim for asylum in the first of these countries that they reach.

Following the enactment of the STCA, an increasing number of asylum seekers began crossing the border through irregular—and often unsafe—border crossings. According to Amnesty International, about 40,000 people entered into Canada through irregular border crossings in 2022 alone, and this number approaches record levels in 2023. In March 2023, the governments agreed to expand the STCA to apply across the entire border, including both irregular and official ports of entry.

Federal Court

In July 2017, a legal challenge to the validity and constitutionality of the STCA was launched in the Federal Court by the Canadian Council for Refugees, Amnesty International Canada, the Canadian Council of Churches, and E., a Salvadoran woman barred from seeking asylum in Canada (the "Applicants").

The Applicants challenged the STCA on two grounds. First, they alleged that Canada failed in its duty to review the ongoing designation of the US as a "safe third country" as required under the agreement by Canadian immigration legislation, the *Immigration and Refugee Protection Act*, thereby rendering the STCA law and regulations *ultra vires* or, in other words, beyond the relevant scope of authority. Second, the Applicants alleged that the STCA violates section 7 (the right to life, liberty, and security of the person) and section 15 (the right to equality) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*").

In a decision dated July 22, 2020, the Federal Court ruled that, while the STCA was not *ultra vires*, the consequences of the STCA's implementation violate section 7 of the *Charter* and are inconsistent with the spirit and objective of the STCA. The Court considered extensive evidence of risks and challenges faced by those deemed ineligible to seek asylum in Canada by the STCA. The Court found that "the risks of detention and loss of security of the person, which are facilitated by the STCA, are grossly disproportional to the administrative benefits of the STCA, which was intended to help Canada and the US share responsibility for refugees in a way that complies with the *Refugee Convention*" (at para 136).

The Court found that the effects of the STCA violate section 7 of the *Charter*, and that this violation is not justifiable under section 1. It did not address the Applicants' section 15 argument. The Applicants' application for judicial review was granted and the legislation enacting the STCA was declared as being of no force and effect. The Court suspended the declaration of invalidity for six months, allowing the Canadian government adequate time to respond.

Federal Court of Appeal

Canada appealed the Federal Court's finding that the STCA unjustifiably infringes section 7 of the *Charter*. In a decision dated April 15, 2021, the Federal Court of Appeal ("FCA") granted the appeal and set aside the Federal Court's judgement.

The FCA found that the Applicants' constitutional challenge to the STCA offended three central "immutable principles" of *Charter* litigation established by the Supreme Court. First, the Courts deciding constitutional challenges with public impact do not deal with "strawmen", which the FCA found that the Applicants created by plucking two provisions in the immigration legislation related to the designation of the US as a "safe third country" out of the complex legislative scheme and singling them out for attack.

Second, the Courts must focus on the true cause of alleged violations of the *Charter*, and the FCA found that the Applicants' *Charter* challenge did not address the true cause of the rights violation, which is the review and assessment processes and the government's operation of these processes. Since the Applicants challenged the legislative scheme, and not the administrative conduct operating the scheme, the FCA found that it was not properly constituted.

Third, the Courts cannot decide constitutional cases without sufficient evidence to allow it to properly adjudicate the issues raised and the FCA found that by failing to challenge the review and assessment process, the Applicants did not provide sufficient evidence. For these reasons, the FCA found that the Applicants' *Charter* challenge to the STCA contained fatal defects.

The FCA also found that the Federal Court's finding of unjustifiable infringement of section 7 of the *Charter* should be set aside because it drew systemic conclusions from individualised evidence, applied Canadian constitutional standards to foreign legal systems, and ignored certain powers that could alleviate the harsh impacts of the legislation on refugee claimants.

The Applicants appealed the FCA's decision to the Supreme Court of Canada.

Supreme Court of Canada

In a recent decision, on June 16, 2023, the Supreme Court allowed the Applicants' appeal in part. The Court found that the legislation enacting the STCA is not *ultra vires*, nor does it violate section 7 of the *Charter*. However, the Court found that the Applicants' challenge to the STCA on the basis of section 15 of the *Charter*, which was not decided by either of the below courts, should be remitted back for consideration by the Federal Court.

The Supreme Court disagreed with the FCA's finding that the Applicants' *Charter* challenge to the legislation on the basis of section 7 was improperly constituted. It found that the provision of the legislation that designated the US a "safe third country" is the legislative basis for ineligibility determinations under the STCA and is therefore the proper ground and subject for constitutional scrutiny.

The Supreme Court found that the consequences flowing from this legislation do not violate section 7 of the *Charter*. It acknowledged that the provision engages liberty and security of the person, but ultimately found that the impugned legislative scheme in this case is neither overbroad nor grossly disproportionate and therefore accords with the principles of fundamental justice. Although the Court accepted that a provision mandating return to a real risk of *refoulement* would be overbroad, as it would go beyond the intended purpose of the legislation to abide by the *non-refoulement* principle, the Supreme Court found that the legislation does not simply mandate return and contains other curative provisions.

That being said, the Supreme Court found that the challenge against the STCA on the basis of section 15 of the *Charter*, the equality rights provision, should be sent back to the Federal Court for determination. The argument pertaining to section 15 is that women fearing gender-based persecution are adversely impacted by the impugned legislation. The Court found that the Court had not disposed of the section 15 claim at first instance, thereby leaving no right of appeal, given the size, seriousness, and complexity of the issue and the record surrounding it.

For these reasons, the Supreme Court allowed the Applicants' appeal in part. It agreed with the FCA that the legislation is not *ultra vires* and does not violate section 7 of the *Charter*, but found that the section 15 claim should be remitted back to the Federal Court for determination. The Court's decision means that as of now, the STCA continues to be in effect.

Shirzad Ahmed

President, Americas Chapter

ASIA PACIFIC CHAPTER

Sean Baker

Dear Colleagues,

This quarter saw two hugely successful conferences attended by our members. I was very pleased that we had a sizeable delegation from the Asia Pacific attending and presenting at our World Conference in the Hague. The Conference was a great success, and our thanks go to the organising committee and all of those involved. The Conference also gave us much to reflect upon in our daily work. I have been reflecting on our discussions on resilience in what can be a very emotionally demanding job, and our discussions on child applicants and how best to protect but also fully take account of their stories.

Our Asia Pacific Vice President, Justice Joy Torres, attended the International Association of Women Judges (IAWJ) 2023 Biennial Conference in Marrakesh, Morocco from 11-14 May as part of a delegation of the Philippine Women Judges Association (PWJA) led by Supreme Court Associate Justice Honourable Amy Lazaro Javier, President of the PWJA and Supreme Court Associate Justice Honourable Maria Filomena Singh, Vice President of the PWJA and including several other distinguished judges. The theme of the Conference was "Women Judges: Achievements and Challenges" with sub-themes covering trauma and resilience, sisterhood and solidarity, trafficking and migration, innovation and leadership. Judge Torres presented as part of the panel on trafficking and migration, focusing on the nexus of migration and the plight of stateless children. The conference attendees were also able to tour the Palais de Justice and get a glimpse of Moroccan culture and heritage.

Judge Torres with attendees of the IAWJ 2023 Conference

Earlier this year, Judge Driver (ret) was invited to attend and provide his input and insights to a UNHCHR organized workshop "Advancing the protection of migrants in vulnerable situations through strategic litigation", including advocates and lawyers from across the region as well as the IOM and the Maldives UN Country Team. The workshop built on the UN Human Rights' *Pathways to Migrant Protection* report and explored the role of strategic litigation in safeguarding the human rights of migrants, in particular by expanding pathways for admission and stay.

As we are in Winter in the South, we work towards announcing a venue and theme for our next regional conference. Stay tuned!

Sean Baker

President, Asia Pacific Chapter

EUROPE CHAPTER

Dear colleagues,

Boštjan Zalar

Important Developments within the European Union Agency for Asylum (EUAA) with potentially considerable impact on judiciaries of the Member States of the EU

The European Asylum Support Office (EASO) was established in 2010 by a legislative act of the EU (Regulation no 439/2010). It was established as an authority managed by the representatives of the executive branches of governments of the Member States. Nevertheless, with Article 6 of that Regulation EASO received a mandate "*to establish and develop training" available also to members of courts and tribunals and not just to decision makers of national administrations dealing with asylum.* From the very beginning of its operations, EASO invited the IARMJ-Europe to actively participate in providing all sorts of professional expertise for the purposes of newly emerging EU system on training of judges of the Member States in the field of asylum. At the next stage of cooperation between EASO and judges of the Member States, the Network of Courts and Tribunals (hereinafter: the Network C&T) was established in 2013, which brings together representatives of judiciaries of the Member States and some other stakeholders, such as UNHCR, CJEU, ECtHR, IARMJ-Europe, AEAJ (Association of European Administrative Judges), ERA (European Law Academy, Trier), EJTN (European Judicial Training Network) for the purpose of taking some strategic decisions concerning training of judges, such as training subjects, training methodologies and selection of trainers in the EASO pool of judges-trainers. A considerable number of representatives of national courts and tribunals in the Network C&T are also active members of the IARMJ-Europe. The Network C&T certainly served also for a more institutionalised and transparent link between EASO and courts and tribunals of the Member States. Namely, it needs to be highlighted that the Network C&T itself is not mentioned in Regulation no 439/2010. In 2015, a cooperation between EASO and IARMJ-Europe evolved into a 7-year contractual relationship with the aim of developing common training materials "*by judges for judges*" (Professional Development Series/Judicial Analysis) on all major chapters of the Common European Asylum System (CEAS). Several thousand pages of those training materials were prepared by judges, published by EASO and are accessible for free on the **website** of EASO (now EUAA) in different languages, except those parts of the materials that are designed only to guide trainers in conducting case studies and moot courts. All training events for judges under the auspices of EASO, which is a complementary EU training system to the national training systems of judges in the Member States of the EU, are based on those Professional Development Series/Judicial Analysis. Thirteen years after the establishment of EASO, the training system of judges under Regulation 39/2010 can be considered to be very innovative and a success story even in its institutional sense, despite the fact that Regulation 439/2010 did not expressly incorporate the Network C&T in the structure of EASO.

In late 2021, EASO became an "EU agency" with the adoption of Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the EU Agency for Asylum and repealing Regulation (EU) 439/2010. With this Regulation, the EUAA has got a new mandate which again concerns judiciaries of the Member States from an additional perspective - namely, under Articles 13, 14 and 15 of Regulation 2021/2303 the EUAA "*shall establish a monitoring mechanism /.../ in order to prevent or identify possible shortcomings in the asylum and reception systems of the Member States and to assess their capacity and preparedness to manage situations of disproportionate pressure so as to enhance the efficiency of those systems"* and this will include handling appeals (Articles 14(2), 14(3)(b) of Regulation 2021/2303). The EUAA shall organise and coordinate activities promoting "*a correct and effective implementation of Union law on asylum*", including through development of operational standards, indicators, guidelines or best practices on asylum-related matters (Article 13(1) Regulation 2021/2303), which will be taken into account for the purposes of monitoring mechanism (Article 13(6) Regulation 2021/2303.

The EUAA, under the new Regulation 2021/2303, is still governed by the Management Board which consists of representatives of governments of the Member States. The procedures for monitoring are much more complex, as it is the case of the existing EUAA system of training of judges. The procedures for monitoring involve participation of the EU Commission, the Executive Director of the EUAA and authorities of the Member States. According to the second sub-paragraph of Article 15, the monitoring programme shall ensure that each Member State is monitored at least once in every 5-year period. This means that the challenges ahead of the EUAA and members of the Network C&T are, in principle (in respect of judicial independence), similar as in 2010 but, in practical terms, they are much more complex and delicate than they were 13 years ago when the training system was established under the auspices of EASO. Similarly, as the old Article 6(5) of the EASO Regulation 439/2010, which stated that the training "*shall be of high quality and shall identify key principles and best practices with a view to greater convergence of administrative methods and decisions and legal practice, in full respect of the independence of national courts and tribunals",* the new provision of Article 14(3)(b) of Regulation 2021/2303 states that monitoring shall cover the operational and technical application of all aspects of CEAS in terms of managing asylum cases efficiently, including handling appeals, "*without prejudice to judicial independence and with full respect for the organisation of the judiciary of each Member State."*

Our experience with the development of the EASO/EUAA training system for judges in the field of asylum-related disputes clearly shows that relying solely on a declaratory provision in the Regulation about the need for full respect for judicial independence, or that the monitoring mechanism should not undermine judicial independence, cannot guarantee quality of monitoring concerning courts and tribunals, nor can it guarantee full respect for judicial independence. Apart from Article (14(3)(b) of Regulation 2021/2303, there are other legal grounds for a substantial participation of the Network C&T in preparing common methodology for the monitoring mechanism in respect of those professional aspects that will affect judiciaries. These legal grounds rest on those provisions which mention the possible engagement of expertise of relevant organisations (second sub-paragraph of Article (14(4) of Regulation 2021/2303) and judicial associations and expert networks (Articles 13(3) of Regulation 2021/2303). However, there is a much stronger legal ground for this in the primary EU law, in the second sub-paragraph of Article 19(1) of the Treaty of the European Union. In February 2018, the Court of Justice of the EU accepted competence over the legal issues and questions of judicial independence in the organisation of judiciaries in the Member States of the EU (see: ASJP, C-64/16, 27 February 2018, paras. 29-44). The Grand Chamber states, in this preliminary ruling, that "***the concept of independence presupposes, in particular, that the body concerned exercises its judicial functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, and that it is thus protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions"*** **(ibid, para 44).** Hence, the new monitoring mechanism, in its judicial aspect under the mandate of the EUAA and based on active involvement of judges through the Network C&T, will have to keep the monitoring mechanism within the boundaries of the concept of training and capacity building of judges, sharing information, experiences and expertise among judges of the Member States, while at the same time it will have to introduce some innovative forms and methodologies.

In the light of this, the IARMJ's Europe Chapter, as being (so far) always substantially involved in the professional activities within the Network C&T affecting judges of the Member States, will have to play a very constructive role in the preparatory activities of the EUAA related to the establishment and exercise of a new monitoring mechanism which will (partly) enter into force on 1 January 2024. The first discussion of this kind already started during the Annual Coordination and Planning Meeting of the Network C&T in Malta (1-2 June 2023) and will continue during the next on-line meeting of the Network C&T on 25 July 2023.

Boštjan Zalar

President, Europe Chapter

Interview with Jolien Schukking: Working as a Judge at the European Court of Human Rights

*We are pleased to provide for you an interview with our good colleague Judge Jolien Schukking, of the European Court of Human Rights. The **interview** was conducted by Mireille van der Stoep, of **Leiden University**, who has very kindly given us permission to reprint it here, in full.*

Alumna Jolien Schukking has been working as a judge at the European Court of Human Rights in Strasbourg since 2017. In this special role, she provides legal protection at an international level in major cases and concerning various topics. What is her job like and what motivates her?

Schukking is a prime example of 'she who dares wins'. After leaving secondary school, she went to the United States to study for a year, while also doing an internship at the United Nations in New York. 'I come from Zeist and had quite a sheltered upbringing. I wanted to go out into the wide world.' At a time when there was no e-mail or internet, there seemed to be limited options. Schukking decided to send letters to certain embassies. 'Using my school English, I asked: "What can I do in your country?" And then the US embassy responded with information about scholarships.... That's how I ended up in the United States."

Recurrent theme: international relations and law

Becoming a judge at the European Court of Human Rights (ECtHR) was not an objective as such, but 'perhaps a dream'. After graduating, she worked as a legal expert at the Dutch Council of State and the Ministry of Foreign Affairs, then as a lawyer and finally as a judge. During her time with the Ministry of Foreign Affairs, she represented the Government of the Kingdom before the ECtHR in Strasbourg and was involved in projects in Central and Eastern European countries aimed at strengthening their judicial systems.

Though not an objective, a focus on human rights aspects is visible throughout her professional life. 'I have always believed that the law can contribute to a more just and better organised society. That was also something that motivated me to stand for election as a judge at the ECtHR.'

What does the ECtHR do?

The ECtHR monitors the observance of human rights and fundamental freedoms contained in the European Convention on Human Rights (ECHR). Any person who believes they are the victim of a violation of such a right can file a complaint at the ECtHR against the country in question.

'First, you have to have put the case to the highest court in your own country.' The complaint can be about anything - for example, an alleged unfair trial, arbitrary detention, wiretapping of telephone calls, or discrimination. But it can also be about issues concerning family law, such as being placed in care or domestic violence, freedom of the press, and ownership rights. 'The complaint could be that you believe your right has been disproportionally infringed or because you feel the government has failed in some way. In the latter case, this could be an infringement of a positive obligation: the government, after all, must design the system so that the rights of all are safeguarded. The ECtHR also deals with inter-State complaints. These are complaints that are submitted by one Contracting State against another, such as the complaint submitted by the Netherlands against Russia concerning the shooting down of flight MH17.'

The ECtHR has 46 judges – one for each Contracting State. These judges are not judges on behalf of their own State; they are independent. 'But if a complaint has been submitted against the Netherlands, it is my task – as the "national judge" – to clarify the Dutch law and context for my colleagues so they can have a better understanding of the case.'

60,000 cases a year

Some 60,000 cases reach the ECtHR each year. These are distributed as well as possible via various mechanisms. Some cases are dealt with by one judge, others by three or seven judges. So not every case gets the same amount of attention, 'but every case gets the attention it deserves. We consider the requirements of each case separately. The complaint of the Netherlands against Russia concerning flight MH17 came before the largest chamber of 17 judges.'

'Many cases are dismissed, for example, because no mistake was made by the national court.' There are also so-called repetitive cases: cases concerning the same issue, such as prison conditions in Romania. 'If the Court has already ruled that in a certain prison the cells are overcrowded, then there is no need to establish this again in a detailed ruling and the case is settled quickly.'

Unfortunately, the ECtHR still does not manage to deal with all cases in time. 'Some 60,000 cases reach the Court each year. This should and could be much lower if national authorities of contracting countries better protected human rights themselves. The ECtHR would then effectively be the last resort. The Court, therefore, organises regular visits, presentations, lectures, and receptions. In this way, we try to provide tools to help national authorities fulfil their duty.'

The ECtHR: 'A House of Stories'

With so many cases being dealt with every day, it is important to remain aware that behind every case is a human being. 'A court is often referred to as a Palace of Justice. But actually, it is more "a House of Stories", stories of people. These stories started long before they came to you the judge and will continue on afterwards. As a judge, it is important that you always realise that those few sentences that you add to that story matter – that they can be decisive for what happens next in that story.'

Future ambitions: Post-mandate policy and better facilities

Schukking is not yet considering her future after the ECtHR. She is in her sixth year as a judge at the Court – an appointment lasts for nine years. She does still have enough ambitions to fulfil within the ECtHR itself. 'Better facilities for family members of future judges who move with them for example. My family couldn't move to Strasbourg because there were no places available for the children in schools. These kinds of problems might deter good candidates from standing for election at the ECtHR.' Some colleagues also find it difficult to find a position in their own country after their appointment as a judge with the ECtHR. 'They might have given rulings that didn't go down well with their government. As a result, it's sometimes hard for them to return to their country in a suitable position.' The ECtHR is therefore drawing attention to the development of a post-mandate policy. 'Laying down a guarantee in national legislation that judges can return to their old job would be something to consider.'

Strive for a balance between the law and your conscience

'Apart from general advice such as "enjoy your time as a student" and "keep chasing your dreams", I would like to pass on a lesson I learned from my mentor in Leiden, Professor Schermers. He told his law students: "Know the rules and when explaining and applying them, never lose sight of the human aspect. Strive for a balance between the law and your conscience. Between head and heart. That lesson applies in all areas of the law".

WORKING PARTY UPDATES

The IARMJ Working Parties were very active at the Hague World Conference. A number of them presented substantial conference papers including:

- Detention;
- Exclusion Clauses, Cessation, and the Deprivation. of Citizenship;
- Human Rights Nexus;
- Artificial Intelligence, Information Technology, and Judicial Decision-Making;
- Country of Origin Information, Expert Evidence, and Social Media.

In addition, the Coordinator of the IARMJ Working Parties Process, James C Simeon, provided a substantive report on the activities of the Working Parties since our last World Conference in Costa Rica. The conference papers and reports are available on the IARMJ website, at **13th World Conference Files**.

At the Hague Conference, as customary, there was a Working Parties breakfast meeting at which it was proposed that two new working parties be formed. Both came to fruition during the various sessions at the Conference.

- Climate, Migration and Protection Pathways, led by **Nurjehan Mawani**, from Canada as Rapporteur, with **Judge Makesh D Joshi**, from the United Kingdom as Associate Rapporteur. Ms Mawani was one of the founding members of the IARLJ, the predecessor to the IARMJ, and was a former Chairperson of the Immigration and Refugee Board of Canada.

- Training/Ongoing Professional Development (title tbc), led by **Anna Bengtsson** from Sweden as Rapporteur, with **Professor Hilary Evans Cameron** from Canada as Associate Rapporteur. Both have had long affiliations with the IARMJ.

The Hague Conference also featured a plenary session that provided the Working Party Rapporteurs with an opportunity to introduce themselves and present a brief update on their activities and future plans. IARMJ members in attendance were invited to join the IARMJ Working Party of their choice and a number did so. Please see the last page of this newsletter for the full list of our Working Parties and their Rapporteurs and contact emails.

The Rapporteurs and Associate Rapporteurs at The Hague, May 2023

From left: Hilary Evans Cameron, Laurent Dufour, Anna Bengtsson, James Simeon, Michael Hoppe, Chiara Piras, Yukari Ando, Julian Phillips, Jade Murphy, Louise Moor, Mark Symes, Martha Roche, Judith Gleeson, Nurjehan Mawani, Christine Cody, John Keith, Hilkka Becker, Declan O'Callaghan, Martin Treadwell and Johan Berg

REFLECTIONS ON THE PRE-CONFERENCE WORKSHOPS

by James C Simeon

"IARMJ Advanced Workshops are Essential to Ongoing Professional Development in International Refugee and Migration Law"

No IARMJ World Conference would be complete without its pre-conference professional development sessions that feature some of the world's noted authorities on their areas of expertise, both academic, experiential, and practical. The Conference held at the epicentre of International Law, The Hague, was no exception. The two-day Advanced Workshop presented 10 outstanding substantive sessions, in English and in French, covering some of the most troubling and contentious legal issues confronting International Refugee and Migration Law. The Advanced Workshops were capped with a warm welcome from IARMJ President the Hon. Justice Isaac Lenaola, Supreme Court of Kenya, UNHCR's renowned Senior Legal Advisor on Judicial Engagement, Carole Dahan, and the European Union's Agency for Asylum's (EUAA) Nicolas Jacobs, Head of Courts and Tribunals Sector, and his colleague, Rossella Ferrari, Senior Officer and Team Leader, Middle East, and North Africa. What was most obvious was the close collaboration of not only the UN Refugee Agency, the foremost body dedicated to the protection of refugees, but also the European Union's own agency for asylum. Such an endorsement from these two leading international refugee agencies underscored the relevance and importance of the pre-conference Advanced Workshops at The Hague for the continuous professional development of refugee and migration law Judges, and decision-makers.

Here is a rather concise synopsis of the 10 Advanced Workshops presented at The Hague.

On Monday, 8 May, Workshop 1, covered the subject of Article 1F(b). "Outside the Country of Refuge… Before Admission as a Refugee," was chaired by Judge Zione Ntaba , High Court, Malawi, and presented by Judge Martin Treadwell. Article 1F, the exclusion clauses, is an integral part of the definition of who is a refugee but there is current divergence in the application and interpretation of Article 1F(b). The key message, as emphasised by Judge Treadwell, is that it is imperative that the international judicial community come to a common understanding of Article 1F(b).

Workshop 2, chaired by Anna Bengtsson, Sweden, was presented by the distinguished Siobhan Mullally, Professor of Human Rights Law, Director, Irish Centre for Human Rights, School of Law, University of Galway, Ireland. Professor Mullally, the UN Special Rapporteur on Trafficking in Persons, Especially Women and Children, works closely with UNHCR and observed that, too often, victims of human trafficking are captured by the criminal justice system but are in fact part of the vast mix of those who are migrating whether through regular or irregular means.

Workshop 3, "Credibility Assessment in Refugee Status Determination: The Rise of Evidence-Based Decision-Making", was chaired by Judge Judith Gleeson and presented by Professor Hilary Evans Cameron. Professor Cameron's research has challenged our conventions for assessing *viva voce* evidence and the narratives of claims. The question she posed was, "Are we testing how well rehearsed and prepared the refugee claimant is that appears before us?" Indeed, she noted, those who are the least consistent may be the most credible, given who is before you. What is required, she offered, is the development of scientific standards for the assessment of credibility. Artificial Intelligence (AI) could do a credibility assessment, but would we be comfortable with that?

The next presentation, Workshop 4, covered the subject of the "Undesirable but Unreturnable," and was chaired by Judge Ella Kataieva, Ukraine, with presentations by Professor James C Simeon, Canada, and Judge Liesbeth Steendijk, The Netherlands. Professor Simeon explained that UBUs are those who have no right to be in a country but cannot be removed. The critical issue is that the number of UBUs in the world is growing, along with the numbers of those who are left in "legal limbo". As to how to properly address this escalating problem in a just manner, Judge Steendijk offered what the European Union is doing to set new standards. What is crucial here is the sound application of human rights standards that are bulwarks of our democracies.

Workshop 5A, on Advanced Hearing Skills, was presented by Sean Baker, Australia, and Kristi Sim, Legal Counsel, Immigration and Refugee Board of Canada. Their focus was on a wide range of key topics: Credibility Assessment and the Pillars of Credibility; Questioning Techniques in Sensitive Hearings; and Trauma-Informed Adjudication – Safe and Informed Hearings; and Virtual Hearings, from by Necessity to the New Normal. The insights gained from their session can hardly be condensed within a single paragraph or let alone even a whole separate article.

"Political Opinion and LGBTI+", Workshop 5B, was chaired by Hilkka Becker, Chair of the International Protection Appeals Tribunal of Ireland, and presented by Jennifer Pollock, and Kay Scorer, both from Canada. Jennifer Pollock presented on the nexus of imputed political opinion, while Kay Scorer presented on gender-based persecution. The essential message of this workshop was that "language does indeed matter" and that gender expression and sexual orientation are fundamentally a dynamic process. What is absolutely essential is "training, training, training", as well as universal training standards for claims on gender-based and sexual orientation grounds.

Parallel concurrent Workshop 5A and 5B were delivered in French and were chaired by Judge Paul Lapombe, EUAA, and covered the topics of LGBTI+, with a presentation by Judge Giles De Guchteneer, Belgium, and the "Protection de la Famille des Beneficiaries de la Protection Internationale", presented by Laurent Dufour, France.

The second day of the Advanced Workshop, Tuesday 9 May, covered the important topic of "Gangs and Organised Crime as Agents of Persecution". Workshop 6 was chaired by Johan Berg (Norway). Justice Shirzad Ahmed (Federal Court of Canada) and Judge Jeremy Rintoul (United Kingdom), were the presenters. Justice Ahmed stated, notably, that the facts cannot be separated from their political context. Judge Rintoul observed that analysing claims from failed states poses some acute challenges. They invite organised criminality and the emergence of "war lords", Somalia being a prime example. He noted that there are echoes here of Max Weber's definition of the sovereign state as having the monopoly on the legitimate use of violence in a given territory. But is a fear of crime a fear of persecution? Clearly, this will depend on its severity and its intent.

Workshop 7 was the last Advanced Workshop before the guided tour to the International Criminal Court that brought an end to the Advanced Workshops before the World Conference. This Workshop appropriately dealt with the all-important topic of "Judicial Independence" and was presented by Justice Lars Bay Larsen, Court of Justice of the European Union, Luxembourg, and chaired by Johan Berg, Norway. Justice Bay Larsen noted that the independence of the judiciary is a fundamental principle of democratic governance. Moreover, the judiciary has demonstrated its resilience time and time again through its adaptability.

The Advanced Workshop was wrapped up by Professor Simeon who noted that the value of our association, as independent legal decision-makers, is that it brings us together "to hone our skill sets" and "to sharpen the saw," as it were, and to stay abreast of new developments in refugee and migration law and practice. And, above all, to share our experiences, knowledge and understanding, and to gain new insights in our ongoing professional development. The IARMJ is our "personal and collective" support network. He looked forward to the World Conference, which would continue the process of ongoing professional development. Professor Simeon thanked all presenters and chairs of the Workshops, the interpreters and technicians who made it all possible, our outstanding office manager Liesbeth van de Meeberg, for her behind-the-scenes efforts to ensure that everything ran smoothly, our sponsors for their generous contributions which had made the Advanced Workshops possible, UNHCR, the EUAA, and many others. Finally, he gave special thanks to the members of the Organizing Committee, including: the Hon. Justice Isaac Lenaola, Judge Catherine Koutsopoulou; Judge Katelijne Declerck and Judge Martin Treadwell, who he thanked for their tremendous effort, for which we were all now richer.

Dr James C Simeon, Associate Professor
School of Public Policy and Administration
Faculty of Liberal Arts & Professional Studies
029 McLaughlin College, York University, Toronto, Ontario, Canada
jcsimeon@yorku.ca

SUPERVISORY COUNCIL

The Supervisory Council was elected for the first time under the new Constitution at the San José World Conference in February 2020. Its membership was renewed at the AGM held at the end of the Hague World Conference this year. It was such a pleasure to see everyone again and to have those essential discussions in the working sessions, but also at coffee, lunch and dinner. I have really missed connecting in person with my IARMJ friends and colleagues.

The other members of the Supervisory Council are Johan Berg (Norway), Thomas Besson (France), Rolf Driver (Australia), Mathieu Hérondart (France), Michael Hoppe (Germany), Esteban Lemus Laporte (Costa Rica), Allan Mackey (New Zealand), Chiara Piras (Switzerland), Hugo Storey (United Kingdom), Joy Torres (Philippines), and Zouheir Ben Tanfous (Tunisia). I was re-elected as Chair of the Supervisory Council, which is an honour and a privilege.

That is a strong group of judges, from all four Chapter regions, and many with Management Board experience to help us in understanding the pressures on the President and Chapter Presidents. Allan Mackey has suggested that we should also ask to see the accounts each year, to enable us better to understand the Association's financial position.

The function of a Supervisory Council is, we understand, normal in the Netherlands, but unfamiliar to common law judges like me. Fortunately, the new IARMJ Constitution sets it out clearly: our role is to have oversight of the work of the Management Board in the specific areas identified in Article 3.10 of the Constitution:

> **"3.10 The role of the Supervisory Council**
>
> 3.10.1 The Supervisory Council has, during the time between General Meetings, overview and supervision of the Management Board, including:
>
> a. formally appointing Chapter Presidents, who have been validly elected by Chapter members, to be Board Members; and
>
> b. deciding upon requests for approval of certain Management Board resolutions, as set out in Article 3.10.2, proposed during that time.
>
> 3.10.2 The following resolutions of the Management Board require prior approval of the Supervisory Council:
>
> a. to establish and/or incorporate any further regional or sub-regional Chapters of the Association, or to any disestablishment or amalgamation;
>
> b. to determine the place or places of the business of the Association;
>
> c. any borrowing on behalf of the Association or any Chapter;
>
> d. the appointment of a replacement Secretary or Treasurer, to fill casual vacancies arising between General Meetings (see Article 3.14.5)."

Our practice is to invite the President and all Chapter Presidents to provide a brief written report dealing with these matters and to attend the annual Council meeting, which has worked well. Our Minutes are uploaded to the IARMJ website: we have met twice, so far, and both have been useful meetings. At the 2023 meeting, immediately before the World Conference, we unfortunately had to activate 3.10.2(d) and approve the appointment of Sebastiaan de Groot as replacement Treasurer, following the sad death of John Bouwman. The appointment approved by the Supervisory Council was made pending the AGM but then confirmed by the membership at the AGM.

At our meetings, all members have contributed to the discussion and the President and Chapter Presidents said that the discussion had been useful to them too. Our next meeting will be in Spring 2024 and will be the subject of a report in that Newsletter.

Judith Gleeson

Chair, Supervisory Council

IN THE LIBRARY

RECENT PUBLICATIONS

LINKS TO A SELECTION OF IN-DEPTH REPORTS COVERING TOPICS OF INTEREST

2022 Report on International Religious Freedom
US Department of State (USDOS), 15 May 2023
The annual Report to Congress on International Religious Freedom describes the status of religious freedom in every country. The report covers government policies violating religious belief and practices of groups, religious denominations and individuals, and US policies to promote religious freedom around the world.

Peru: Lethal Racism: Extrajudicial Executions and Unlawful Use of Force by Peru's Security Forces
Amnesty International, 25 May 2023
Since 7 December 2022, Peru has experienced one of its deepest political and social crises of recent decades. Thousands of protesters were met with force on the part of the authorities. This report analyses the use of force by Peruvian police and military which, it concludes, resulted in grave human rights violations.

Impact of Prolonged Immigration Detention on Rohingya Families and Communities in Malaysia
Mixed Migration Centre (MMC), 24 May 2023
As of the end of March 2023, there were 185,760 recognised refugees and asylum seekers registered with UNHCR in Malaysia; of this number, some 107,430 were Rohingya. This research focuses on how Rohingya families and communities have been impacted by Malaysia's indefinite immigration detention policies. It also provides strategic and relevant recommendations for increasing access to protection and services for Rohingya refugees in Malaysia, among other information.

Understanding the Trauma-Related Effects of Terrorist Propaganda on Researchers
Global Network on Extremism and Technology, 9 May 2023
This report examines how exposure to terrorist propaganda may lead to trauma in online extremism researchers. Although focussed on the experiences of researchers, the report's findings are useful for all those employed in fields which encounter terrorist or other significantly violent content, and the report highlights "an urgent need to introduce new standards… to protect the wellbeing of researchers including (but not limited to): improvements in the working culture, formal and supervised procedures for analysing terrorist content, the availability of free mental health services and specialised training for junior researchers".

Transgressive Transitions: Transphobia, Community Building, Bridging, and Bonding within Aotearoa New Zealand's Disinformation Ecologies March-April 2023
The Disinformation Project, 5 May 2023
This report details evidence of a measurable rise in both volume and tone of hatred towards transgender people in 2023 in New Zealand. Online disinformation networks, some of which were built on COVID-19 denial and anti-vaccine sentiment have now come to embrace transphobic content, by some accounts a result of "community bridging" efforts by New Zealand-based neo-Nazi and far-right persons. The report raises concerns not only for the safety of trans people in New Zealand, but for the flows of dis- and misinformation here and internationally.

Bangladesh: New Risks for Rohingya Refugees
Human Rights Watch, 18 May 2023
Recent reports indicate that Bangladesh and Myanmar are organizing returns of Rohingya refugees from Bangladesh to Myanmar's Rakhine State without consulting the community or addressing the grave risks to their lives and liberty. On May 5, 2023, Bangladesh officials, in coordination with Myanmar junta authorities, took 20

Rohingya refugees to Rakhine State to visit resettlement camps as part of renewed efforts to repatriate about 1,100 Rohingya in a pilot project. This brief report details the current state of relations between Bangladesh and Myanmar, as well as the current status of Rohingya in both countries.

ARTICLES OF INTEREST IN THE MEDIA

A selection of media reports which you may have missed over the past couple of months

When Artificial Intelligence Goes Wrong
Bob Gourley - OODALoop, 28 May 2023
AI has already proven itself as a hugely valuable technology. Unfortunately, the acceleration of AI solutions causes many to overlook critically important cybersecurity and business risk considerations. And the very nature of these solutions is bringing new risks.

How China Integrates Drones Into PLA Operations Surrounding Taiwan
The Diplomat, 27 May 2023
Chinese drones have recently made headlines by circumnavigating Taiwan twice in one week. This article examines how China's People's Liberation Army utilises drones near Taiwan.

Addressing Jemaah Islamiyah's Infrastructure in Sulawesi
The Diplomat, 26 May 2023
The threat of terrorism in Sulawesi remains. Even as counterterrorism efforts become increasingly intensive, the island continues to attract terrorists from various parts of Indonesia. "Despite aggressive counterterrorism efforts, Sulawesi still plays an important role for JI as a venue for key fundraising, membership training, and preaching."

Decoding China's Escalation of the Chip War
The Diplomat, 23 May 2023
China has offered its first retaliatory measure in the ongoing technological tussle between the United States and China over the semiconductor industry. The ban on Micron effectively revived China-US tensions over technology, despite US President Joe Biden's predictions of an imminent thaw in relations with China.

Women speak out online about reports of sexual violence in Sudan
Al Jazeera, 16 May 2023
Multiple reports of rape perpetrated by the paramilitary Rapid Support Forces have emerged across Sudan. Women use social media to call out and warn others. This article reports that, although the incidents are difficult to independently verify, "they suggested a broad pattern of behaviour in which women are being routinely targeted, in some cases in front of family members, and subjected to brutal acts of sexual violence".

'I saw many bodies': having escaped one conflict, Tigray refugees face new terrors
The Guardian, 15 May 2023
This article reports that refugees from Ethiopia are being kidnapped, taken across the Sahara, and tortured for ransom. According to the article, "[t]he refugees are the latest victims of the Sahara's vast and brutal people-trafficking industry, believed to be worth hundreds of millions of dollars a year, stretching across Africa and trapping those fleeing wars, political persecution and economic hardship. Those who cannot pay the ransoms demanded by the gangs have no prospect of release".

Cyclone Mocha leaves 'trail of devastation' in Myanmar
UN News, 15 May 2023
First reports indicated that the worst of the cyclone spared the major Rohingya refugee camp complex at Cox's Bazar in Bangladesh, home to nearly one million Rohingya refugees. But reports indicated that, although not as

dire as predicted, there were still several killed in Myanmar, and hundreds of thousands of Rohingya left homeless. OCHA said there was widespread destruction across Sittwe, with few houses left standing.

Nepal takes a step toward LGBTQ equality
The Diplomat, 12 May 2023
On May 2, a landmark decision was handed down by a Division Bench of the Supreme Court of Nepal, ordering the government to officially recognize same-sex marriage and marking a significant stride toward a more equal and accepting society for LGBTQ+ persons in the country. The court ruled that all discriminatory statutes, including those related to rape, marriage, and inheritance, should be amended to ensure equality. Additionally, the court emphasized that the country's failure to recognize same-sex marriage was a violation of the Nepali Constitution.

Sri Lanka court clears path for decriminalisation of homosexuality
South China Morning Post, 9 May 2023
Activists in Sri Lanka have been campaigning for years to change the law in Sri Lanka, where being gay is still punishable by a prison sentence and a fine. Sri Lanka's Supreme Court has given the green light to a bill seeking to decriminalize homosexuality. Activists are seeking support from parliamentarians to push forward the proposed legislation through parliament.

RECENT CASE-LAW OF INTEREST FROM AROUND THE WORLD

AFRICA

S A v Minister of Home Affairs and Anor; S J v Minister of Home Affairs and Anor;

B I v Minister of Home Affairs and Anor

[2023] ZAGPJHC 178 (14 March 2023) **High Court, Gauteng, South Africa**

The court below had refused to order the release of three illegal foreigners, who were being held in detention under s34 of the Immigration Act, and had expressed a desire to apply for asylum.

Guided by the Constitutional Court in *Ruta v Minister of Home Affairs,* and *Abore v Minister of Home Affairs,* the Court interpreted the application of the *non-refoulement* principle before and after the 2020 amendments to the Refugees Act and its regulations. These cases had held that the right to seek asylum goes beyond the procedural right to lodge an application, although this was an important component of the right. They had noted that the Immigration Act should be read in harmony with the Refugees Act. If an asylum-seeker is in the country unlawfully as an 'illegal foreigner', they have the right to seek and enjoy asylum once they indicate an intention to apply for asylum. The right applies for as long as the claim has not been rejected after a proper procedure. Section 2 of the Refugees Act captures the protection of refugees and asylum seekers under the principle of non-refoulement and should prevail when there is a conflict with other provision(s) in the Refugee Act or other laws.

The court considered the 2020 amendments and held that the detention of 'illegal foreigners' under s34 should cease when the application of the Refugees Act is triggered by an indication of an intention to apply for asylum, not by a formal application being submitted. Further, the 'good cause' enquiry in reg 8(3) of the Refugee Regulations is not a precondition for making an application for asylum, and must be read as part of the overall enquiry to facilitate the application. Finally, the court declared reg 8(4) (which sought to limit the right to seek asylum by empowering a judicial officer to require a foreigner who appears in court and indicates an intention to seek asylum to show good cause) to be *ultra vires* because it introduced a requirement not found in the Refugees Act. Therefore, it conflicted with section 2 of the Refugees Act and must be ignored or read *pro non scripto.*

A v Minister of Home Affairs and Others

(CCT 250/22) [2023] ZACC 16 (12 June 2023) **Constitutional Court of South Africa**

The applicant, an Ethiopian illegally in the country for a long period, sought to challenge the order of the High Court, which had struck out his urgent application for lack of urgency.

In the High Court the applicant sought an order preventing his deportation until his status under the Refugees Act had been finally determined. He also sought orders declaring his detention unlawful and that he was entitled to remain in South Africa for a period of 14 days to allow him to approach a Refugee Reception Office, for his immediate release from detention and directing the respondents to accept his application and issue him with a temporary asylum seeker permit.

As the Constitutional Court put it:

> "In a terse judgment, the High Court held that the urgency was self-created by the applicant as he had delayed evincing his intention to seek asylum. On that basis, the Court struck the matter from the roll with costs for lack of urgency."

The Constitutional Court held that, following *Ruta* and *Abore*, a foreigner who indicates a wish to seek asylum must be given the opportunity. As to whether the person could be detained prior to lodgement of a claim, the Court noted the respondents' legal obligation to assist him with the process of applying for asylum in accordance with his expressed wish, which they should have set in motion once he made his intention known to them, "throws a spanner in the works". Indeed, the respondents had made no effort at all to assist him.

The Court held that the applicant was entitled to an opportunity to be interviewed to ascertain whether there are valid reasons why he is not in possession of an asylum transit visa. He must, prior to being permitted to apply for asylum, show good cause for his illegal entry and stay in the country. Once he passes that hurdle and an application is lodged, the entitlements and protections in sections 22 and 21(4) of the Refugees Act will be available to him. Once he has an asylum seeker visa, he is entitled to remain temporarily. His continued detention, if resting solely on section 34 of the Immigration Act, would unquestionably become unlawful, because he would no longer be an "illegal foreigner". Merely expressing an intention to seek asylum does not entitle the applicant to release from detention. On the other hand, the state is obliged to assist him to give effect to his intention to apply. At a practical level, the respondents must facilitate arrangements either to transport the applicant to a place for interview or bring the relevant officials to the correctional centre to conduct the necessary processes, and must refrain from deporting him until his asylum application is finalised.

Akouedenoudje v Republic Of Benin

Application No 024/2020 (13 June 2023) **African Court on Human and Peoples' Rights (English and French)**

On 22 July 2019, the Benin Minister of Justice and Legislation and the Minister of the Interior and Public Security issued an inter-ministerial Order, Article 3 of which prohibited the issue of official documents (including identity documents) to persons wanted by the judicial authorities. The applicant contended that the Order violated the right to the presumption of innocence and the right to nationality.

After rejecting various challenges to admissibility, the Court held that the refusal to issue the said documents, was not based on any judicial decision and suggested that persons "wanted by the judicial authorities" were guilty. That perception was exacerbated by the fact that the list of such persons could be viewed on the Ministry of Justice and Legislation website. The Court noted that, under the name of each person "wanted by the judicial authorities" was mentioned an offence and, next to it, a court. These alone sufficed to lead the public to believe that the persons were guilty. In view of this, the Court found that the Respondent State violated the right to the presumption of innocence under Article 7(1)(b) of the Charter.

The Court also held that proof of nationality is a corollary of the right to nationality, so that a citizen cannot be arbitrarily deprived of it (see Art 15 of the UDHR and Art 5 of the Charter). Thus, to avoid arbitrariness, measures denying the enjoyment of the right to nationality must have a clear legal basis, must serve a legitimate purpose in line with international law, must be proportionate to the interest they seek to protect, and there must be procedural safeguards entitling the person to defend their case before an independent body. The Court noted that, although the State's legislation provided that issues of nationality, personal status, proof of nationality and its effects were matters of law, the refusal to issue a certificate of nationality on the basis of an inter-ministerial Order intervened in an area that was the preserve of the law. The Court further held that prohibiting the issue of certificates of nationality, or cancelling the same, was of a nature to negate the legal status of wanted persons and to lead to statelessness, which was clearly disproportionate with the purpose of the law.

The Court ordered the Respondent State to take all measures to revoke the inter-ministerial Order.

AMERICAS

Canadian Council for Refugees v Canada (Citizenship and Immigration)

2023 SCC 17 (16 June 2023) **Supreme Court, Canada**

See Shirzad Ahmed's excellent synopsis of this recent decision in the Americas Chapter report in this issue.

Martinez v Minister of Public Safety and Emergency Preparedness

2023 CanLII 58171 (30 June 2023) **(Federal Court)**

Mr Martinez had a troubled background, including robbery with a firearm. He had arrived in Canada in 1998, aged 4, and was a resident but now faced deportation as a danger to the community.

Sentenced to five-and-a-half years in prison, and then immigration detention, Mr Martinez was released in November 2021. In prison, he had been diagnosed with multiple sclerosis. Released, he began treatment and asked that his removal be deferred for three to six months to allow him to attend an MRI appointment, an appointment at an MS Clinic and to give his family the time to transfer his specialist medical care to Argentina.

The specialist treating Mr Martinez advised the immigration authorities, *inter alia*, that:

> "If the patient is not on regular treatment or does not have an adequate follow up, they may develop symptoms that can lead to irreversible disability….
>
> To safely monitor treatment response, the patient should have a regular follow-up with in-person assessments yearly. They should also have yearly MRIs… MS is a highly unpredictable disease on an individual basis. It is a potentially disabling condition and one of the leading causes of neurological disability in young adults in North America. Early and active treatment management improves the chance of optimal disease control and reduces the risk of future disability and shorter life expectancy."

In support of the request for a three to six month delay in deportation, Mr Martinez's mother wrote:

> "I do not have any family in Argentina to help him, but I have a friend there… whose husband is a doctor…. My hope is to work with my friend and her husband to find an MS specialist in Argentina enrol Frederico as a patient, and transfer Federico's medical files there ahead of time in order to make sure that there is no gap in his treatment. Even in a rich country like Canada, it takes time to enrol in a specialist clinic."

The Court found that the immigration officer failed to give proper weight to these concerns, relying on an online article which stated that many Argentinian doctors and specialists are overseas trained "and you won't find it hard to locate an English speaking physician". The officer failed, however, to give any regard to the balance of the

article which stated that "Access to [public health care]… is all great news if you are not in a hurry. The down side is that even though the quality of care can be good, waiting lists for public health care can be frustratingly long, which is why so many Argentinians – and the majority of expats – seek their health care from other sectors". The officer also placed undue weight on the question whether Mr Martinez was a danger to the community, finding that he had "a substantial history of criminal activity involving violence and firearms" and had offended after he was incarcerated. The Court noted that, in fact, there had been only one other offence involving violence – a 2012 assault with intent to resist arrest and that the prison infractions were recorded as not serious in nature.

Acknowledging the competing risks of irreparable harm which had to be balanced, the Court granted a stay of Mr Martinez' removal, stating:

> "On balance, given the risk of irreparable harm to the Applicant's health, the imminence of his annual MRI and assessment at the MS Clinic and the fact that he has been released from immigration detention on the conditions set out above, I conclude that the Applicant would suffer the greater harm if he were removed before his scheduled medical appointments have been completed, his MS assessed and he has made arrangements for his health care to be assumed by MS specialists in Argentina."

The case is an abject lesson in the need for common sense in administrative decision-making. The length of the requested delay had been reasonable given the need for there to be no gap in medical treatment and Mr Martinez was described by a counsellor as "mature rehabilitated individual", whose record did not really point to any risk of recidivism. Instead of allowing the request, the further delay and cost to the Canadian taxpayer of Federal Court proceedings seems out of proportion as the consequences of declining it.

ASIA PACIFIC

ENT19 v Minister for Home Affairs

[2023] HCA 18 (14 June 2023) **High Court, Australia**

The plaintiff, from Iran, arrived in Australia by boat in December 2013 and was detained under s189 of the Migration Act 1958. As an "unauthorised maritime arrival", he was unable to make a visa application until, on 7 September 2016, a Minister determined under s46A(2) that it was in the public interest that he be permitted to do so. On 3 February 2017, he applied for a temporary protection visa – known as a Safe Haven Enterprise Visa.

In October 2017, the plaintiff pleaded guilty to people smuggling. The judge found that his first attempt to come to Australia with his family had been unsuccessful. The people smugglers wanted more money for a second journey and did not allow the plaintiff to travel with the family. He was required to work for the people smugglers in a "people management role" to pay for his passage to Australia. The judge found that his moral culpability was significantly reduced, but deterrence was a fundamental consideration for such an offence. He was sentenced to eight years' imprisonment. On completion, he was transferred to immigration detention.

The Minister for Home Affairs decided that the plaintiff was not a person to whom a protection obligation was owed and refused a visa. On review, the Immigration Assessment Authority remitted the decision, directing that the plaintiff was a refugee. The visa application was then refused by the Minister for Immigration and Border Protection under s 501(1) of the Act (because he did not pass the 'character' test). The plaintiff sought judicial review and the decision was quashed by the Federal Court by consent. The application was then refused by the Minister for Home Affairs, under s65 of the Act. That decision, too, was quashed by the Federal Court.

The Minister for Home Affairs then decided under s65 of the Act to refuse the visa application because she was not satisfied, under cl 790.227 of Sch 2 of the Migration Regulations 1994 that the grant of the visa was in the national interest, because, in her view, it was not in the national interest to grant a protection visa to a person convicted of people smuggling. The Minister accepted that the plaintiff faced indefinite detention under the Act

as a consequence of the decision because he could be returned to Iran (by operation of s 197C(3)[37]) and the prospects of finding another country willing to receive him were poor.

By a 4-3 majority, the High Court held, on review, that Parliament could not have intended, by cl 790.227, to leave the assessment of whether it is in the national interest for a refugee to be refused a protection visa to the subjective evaluation of the Minister, unconstrained by any of the other provisions that govern the decision to grant or refuse a protection visa. Or that the Minister could choose to administer a general policy that they personally considered to be in the national interest, unconstrained by the policy set by Parliament in the Act. In particular, ss 47 and 65 (governing the criteria for the grant of a visa) could not be avoided by the 'trump card' of cl 790.227. Clause 790.227 is a cumulative requirement for the grant of a visa, operating in addition to the other visa criteria – it provides an additional basis to refuse the visa if the Minister considers, for some other reason (and that reason must be "another" reason), that the grant of the visa is not in the national interest.

A writ of certiorari issued, quashing the decision to refuse to grant the plaintiff a visa and a writ of mandamus issued, commanding the Minister to determine the visa application according to law within 14 days.

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Thornton

[2023] HCA 17 (14 June 2023) **High Court, Australia**

The appellant, a United Kingdom citizen, arrived in Australia in 1999, aged three. He lived in Australia thereafter on a series of temporary visas, the last of which was a Class BB Subclass 155 (Five Year Resident Return) visa.

The appellant's visa was mandatorily cancelled under the 'character test': s501(3A) of the Migration Act 1958. A person's visa must be cancelled if they do not pass the 'character' test and a person does not pass it if they have a 'substantial criminal record': s501(6)(a). A person has a 'substantial criminal record' if sentenced to a term of imprisonment of 12 months or more: s501(7)(c). The appellant had been convicted of serious domestic violence offences as an adult and sentenced to 24 months' imprisonment, which triggered the cancellation of his visa.

In seeking revocation of the mandatory cancellation, the appellant did not dispute that he had been found guilty of violent offences in Queensland (a State of Australia) when he was aged 16 and 17, though no conviction was recorded. In considering the nature and seriousness of the appellant's criminal conduct, the Minister made note of his juvenile offences, before referring to his later convictions. The Minister had noted that Mr Thornton had begun "offending as a minor and had a number of offences recorded before reaching adulthood" before concluding that the appellant represented an unacceptable risk of harm to the Australian community.

The issue before the High Court was the construction of the relevant State and Commonwealth laws which provided that, where no conviction was recorded under the relevant youth justice provisions, (s85ZR(2)(b) of the Crimes Act 1914 (Cth) and characterisation of s184(2) of the Youth Justice Act 1992 (Qld)) a person was taken 'never to have been convicted of those offences' and that 'a finding of guilt without the recording of a conviction is not taken to be a conviction for any purpose.'

The High Court held, by majority, that the Minister had taken into account an irrelevant consideration, which was a jurisdictional error vitiating the decision. Section 184(2) of the Youth Justice Act was a State law which, in all circumstances and for all purposes, provided that Mr Thornton was taken never to have been convicted of an offence committed when he was a child under a Queensland law. The consequence was that Mr Thornton, under s85ZR(2) of the Crimes Act, was to be taken by any Commonwealth authority, in all circumstances and for all purposes, never to have been convicted of an offence to which s 184(2) of the Youth Justice Act applied. The reasoning of the Minister which included the consideration of his offending as a minor was material to the

decision and the history of his offending was considered central to the Minister's conclusion and could well have been different if the impermissible consideration had not been taken into account.

EUROPE

T (Russian Federation) v International Protection Appeals Tribunal & Anor

[2023] IEHC 271

A successful judicial review by the Irish High Court of the International Protection Appeals Tribunal (IPAT)'s decision, excluding a refugee applicant from being recognised as refugee. IPAT had considered that he had committed a "serious non-political crime" prior to arriving in the state. The Court held that IPAT had failed to adequately identify the nature of the crime as there was no meaningful analysis of whether the crime was "serious" or "non-political"; and that IPAT had failed to consider the status of various official Russian documents and whether it was appropriate to rely on documents emanating from Russian Federation. The IPAT decision was quashed and remitted to a differently constituted division of the Tribunal.

R (AAA (Syria) AHA (Syria) AT (Iran) AAM (Syria) NSK (Iraq)) v Secretary of State for the Home Department

[2023] EWCA Civ 745

By a majority of two to one, the UK Court of Appeal has ruled that the government's 'Rwanda policy' is unlawful. The Court found substantial grounds for thinking that Rwanda was not a safe third country, that there were real risks of *refoulement* or breaches of Article 3, and that asylum claims would not be properly determined. Unless and until these deficiencies by Rwanda are corrected, the removal of asylum-seekers to Rwanda is unlawful.

"It is us today. It will be you tomorrow."

- **Haile Selassie, in a speech to the League of Nations, 30 June 1936**

"Twenty-seven years ago, as Emperor of Ethiopia, I mounted the rostrum in Geneva, Switzerland, to address the League of Nations and to appeal for relief from the destruction which had been unleashed against my defenceless nation, by the Fascist invader. I spoke then both to and for the conscience of the world. My words went unheeded, but history testifies to the accuracy of the warning that I gave in 1936.

Today, I stand before the world organisation which has succeeded to the mantle discarded by its discredited predecessor. In this body is enshrined the principle of collective security which I unsuccessfully invoked at Geneva. Here, in this Assembly, reposes the best - perhaps the last - hope for the peaceful survival of mankind."

- **Haile Selassie, in a speech to the United Nations, 4 October 1963**

Hailie Selassie remains the only leader of a country ever to address both the League of Nations and the United Nations

WHO WE ARE AND WHAT WE DO

THE INTERNATIONAL ASSOCIATION OF REFUGEE AND MIGRATION JUDGES

The IARMJ is an organisation for judges and decision-makers interested in refugee law and migration law. In particular, it fosters recognition that refugee status is an individual right established under international law, and that the determination of refugee status and its cessation should be subject to the rule of law.

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Contact:
Liesbeth van de Meeberg, Office Manager, IARMJ
office@iarmj.org or +31 6150 42782

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THE SUPERVISORY COUNCIL

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THE ASSOCIATION'S WORKING PARTIES

The Association maintains a number of Working Parties, for the advancement and exploration of developments in refugee and migration law. The Convenor of the Working Parties is **James Simeon**, who can be contacted at **jcsimeon@yorku.ca**. The Working Parties' Rapporteurs are:

	Rapporteurs	
Artificial Intelligence	**John Keith**	**uppertribunaljudge.keith@ejudiciary.net**
Asylum Procedures	**Michael Hoppe**	**Michael.Hoppe@vgkarlsruhe.justiz.bwl.de**
Climate Change, Adaptability and the Migration Nexus	**Nurjehan Mawani**	**nurjehan.mawani@gmail.com**
Deportation	**Martin Treadwell**	**Judge.Treadwell@courts.govt.nz**
Detention	**Julian Phillips**	**residentjudge.phillips@ejudiciary.net**
Exclusion, Cessation and Deprivation of Citizenship	**Johan Berg**	**jbe@une.no**
COI, Expert Evidence and Social media	**Mark Symes**	**marks@gclaw.co.uk**
Human Rights Nexus	**Judith Gleeson**	**UpperTribunalJudge.Gleeson@ejudiciary.net**
Judicial Resilience and Well-Being	**Martha Roche**	**Martha.Roche@justice.govt.nz**
Particular Social Group	**Hilkka Becker**	**hcbecker@protectionappeals.ie**
Training	**Anna Bengtsson**	**annadotbengtsson@gmail.com**
Vulnerable Persons	**Kyrie James**	**kyrie@ibnetworks.net**