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Comment from Alvan, Cesar

Posted by the **United States Courts** on Nov 17, 2025

Comment

I support the proposed amendment to Federal Rule of Appellate Procedure 15 that addresses the “incurably premature” rule. This can unfairly make petitions to be dismissed when someone files for review before an agency finishes deciding a rehearing request. The issue is that even though a party may act in good faith they still could lose their chance for review.

The new subdivision (d) fixes this issue by allowing prematurely filed petitions to become effective once the agency rules on the rehearing. This change makes the process clearer and align more with how appeals from district courts already work under rule 4. It also keeps from forcing people to file multiple petitions just so one gets reviewed.

It is, however, still important that the amendment still requires someone to file a new amended petition if they want to challenge the agency’s decision on the rehearing itself. A process like this will remain organized while ensuring that the court can tell which decision is being appealed. Overall, there is less confusion, an overall more just system, and makes the appellate rules more aligned with today's work. I believe this to be a good change.

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Comment from Skow, Kaitlyn

Posted by the **United States Courts** on Dec 10, 2025

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Comment

I am strongly supporting the proposed amendment, to Federal Rule of Appellate Procedure 15. The current rule of petitioners, if they file the petition during a rehearing or when it is pending the petition will be dismissed as "incurably premature". This means that petitioners would need to file a second petition after the agency makes a final rule. If there is not a second petition filed, the original one will be dismissed. This current rule is harmful to unrepresented individuals, immigration petitioners, workers challenging labor laws and companies facing weak administrative procedure. This proposed amendment is based on a successful revision to a rule which allows civil petitions to be considered even if they are filed prematurely, it will just have to wait until the final ruling. This proposed rule would modify administrative review cases, holding premature petitions until it is ripe. This would not burden agencies or courts because petitioners would still have to file a new or amended petitions, to maintain clarity in the issue. This would increase fairness while not losing any efficiency.

Give Feedback

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USC-RULES-AP-2025-0001-0004

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Comment from International Attestations, LLC

Posted by the **United States Courts** on Feb 10, 2026

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Comment

This comment generated by the Honorable Melissa A. Kotulski of International Attestations, LLC(R)(IAUSA) is developed at the prompting of the periodic and regular review of the rules through a rule making process that is generated by the U.S. Courts as presented by the Judicial Conference Advisory Committee (JCAC). For the 2026 Comment Period, the Committee presented its proposed procedural rule-changes for the U.S. bodies of law pertaining to Appellate, Bankruptcy, Civil, Criminal and Evidence (Collectively, The Rules. Separately Appellate Rules, Bankruptcy Rules, Civil Rules, Criminal Rules, and Evidence Rules). Ms. Kotulski has submitted testimony for the Civil Rules, and she is focusing her comments on three topics that also includes a review of one of the proposed changes to Evidence.
The drafters of the Rules of Civil Procedure and Evidence, in part, propose rules that are touching upon how procedure is impacted by new technology regarding notice of and place for g giving remote testimony (Civil Rules 26 and 45) along with the admissibility of that which is machine-generated (Evidence Rule 707). Also, business organizations will now be included as part of the provision addressing corporations (Civil Rule 7.1) as well as a shift to individual claims rather than entire action dismissals (Civil Rule 41).

IAUS

The drafters of the Rules of Civil Procedure and Evidence, in part, propose rules that are touching upon how procedure is impacted by new technology regarding notice of and place for giving remote testimony (Civil Rules 26 and 45) along with the admissibility of that which is machine-generated (Evidence Rule 707). Also, business organizations will now be included as part of the provision addressing corporations (Civil Rule 7.1) as well as a shift to individual claims rather than entire action dismissals (Civil Rule 41).

IAUSA proposes that the Judicial Conference further consider the rules in the international context something they exemplified that they already "get" by enriching pathways for inclusion of American borne personages whether individual, corporate agency, or other. They "get" business in the context of the Federalist Papers and the International Court of Justice. They "get" claims-based (rather than entire case-based) dismissals with a caution to understand them in the U.S. jurisprudence of the line-item veto. And they "get" technology's

influence on the Courts--and may well wait some more time to make rules when their rules are not quite ripe for publication yet. (Comment Attached from the Honorable Melissa A. Kotulski of International Attestations, LLC)

Attachments 1

2026.2.9 Rules for Judicial Conference Changes

Download (https://downloads.regulations.gov/USC-RULES-AP-2025-0001-0007/attachment_1.pdf)

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Feb 9, 2026

INTERNATIONAL ATTESTATIONS, LLC® (IA) (USA)

Judicial Conference of the United States of America

GETTING INTERNATIONAL MATTERS IN U.S. RULE CHANGES: CLAIMS, BUSINESS ORGANIZATIONS & TECHNOLOGY

Comments for Proposed Rule Changes 2025-2026

Prepared by: The Honorable Melissa A. Kotulski
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Date Submitted: Monday, February 9, 2026, 11:59 p.m. PST

U.S. JUDICIAL CONFERENCE COMMENTS (2026)
FROM INTERNATIONAL ATTESTATIONS, LLC ®

GETTING INTERNATIONAL MATTERS IN U.S. RULE CHANGES:
BUSINESSES, CLAIMS, & TECHNOLOGY

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2.) Preliminary Draft of Proposed Amendments to the Federal Rules of Bankruptcy Procedure (Posted August 13, 2025, Due February 16, 2026) https://www.regulations.gov/document/USC-RULES-BK-2025-0002-0001.

3.) Proposed Amendments to the Federal Rules of Civil Procedure (Posted August 13, 2025, Due February 16, 2026) https://www.regulations.gov/docket/USC-RULES-CV-2025-0004.

4.) Proposed Amendments to the Federal Rules of Criminal Procedure (Posted August 13, 2025, Due February 16, 2026) https://www.regulations.gov/docket/USC-RULES-CR-2025-0003.

5.) Preliminary Draft of Proposed Amendments to the Federal Rules of Criminal Procedure (Posted August 13, 2025, Due February 16, 2026). https://www.regulations.gov/document/USC-RULES-EV-2025-0034-0001.

ABBREVIATIONS

Appellate Rules	The Rules of Appellate Procedure
Bankruptcy Rules	The Rules of Bankruptcy Procedure
Civil Committee	The Rules Committee dedicated to the Rules of Civil Procedure at the Judicial Conference of the United States of America
Civil Rules	The Rules of Civil Procedure
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CAS	Court of Arbitration for Sports
Criminal Rules	The Rules of Criminal Procedure
Evidence Rules	The Rules of Evidence
IAUSA	International Attestations, LLC
ICJ	International Court of Justice
ILC	International Law Commission
JCAC	The Judicial Conference Advisory Committee
The Rules	The body of rules for appellate, bankruptcy, civil, criminal, and evidence procedures.

STATEMENT OF PURPOSE

This comment generated by the Honorable Melissa A. Kotulski of International Attestations, LLC© (IAUSA) is developed at the prompting of the periodic and regular review of the rules through a rulemaking process that is generated by the U.S. Courts as presented by the Judicial Conference Advisory Committee (JCAC). For the 2026 Comment Period, the Committee presented its proposed procedural rule-changes for the U.S. bodies of law pertaining to Appellate, Bankruptcy, Civil, Criminal, and Evidence (Collectively, The Rules. Separately Appellate Rules, Bankruptcy Rules, Civil Rules, and Criminal Rules, and Evidence Rules). Ms. Kotulski has submitted testimony for the Civil Rules, and she is focusing her comments on three topics that also includes a review of one of the proposed changes to Evidence.[1]

[1] For the record, the other proposed rule changes are worthy of comment as well: 1. **Appellate Rule 15** (Review or Enforcement of an Agency Order—How Obtained; Intervention) addressing incurably premature petitions or applications; 2. **Bankruptcy Rule 2002** (Notices) in the context of captions referring to Form 416B requirements for a caption and **Bankruptcy Forms 101** (Voluntary Petition for Individuals Filing for Bankruptcy) showing which Employer Identification Number is required and **106C** (The Property You Claim as Exempt) determining exempted assets; 3. **Civil Rule 81** (Applicability of the Rules in General; Removed Actions) pertaining to jury demand after removal; 4. **Criminal Rule 17** (Subpoena) regarding relevance and materiality in subpoenas to third parties of applicability, codification of a *Nixon* standard, motion and order timing, *ex parte* proceedings, place of production, preservation of disclosure policies, and clarification of provisions for different proceedings; 5. **Evidence Rule 609** (Impeachment by Evidence of a Criminal Conviction) regulating the probative value and prejudicial effect of convictions in a "protective" balancing test. These Rules can be instructive for analysis of the other rules. For example, IA's argument that New Evidence Rule 707 be tabled or nixed entirely may be emboldened by comparison to approaches to Criminal Rule 17—which had gone through a potential erasure from that body of rules.

The drafters of the Rules of Civil Procedure and Evidence, in part, propose rules that are touching upon how procedure is impacted by new technology regarding notice of and place for giving remote testimony (Civil Rules 26 and 45) along with the admissibility of that which is machine-generated (Evidence Rule 707). Also, business organizations will now be included as part of the provision addressing corporations (Civil Rule 7.1) as well as a shift to individual claims rather than entire action dismissals (Civil Rule 41).

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ORGANIZATIONAL STATEMENT: INTERNATIONAL ATTESTATIONS, LLC ®

International Attestations, LLC® is a small, woman-owned organization borne from Hartford/Wethersfield, Connecticut (USA) that is focused on international affairs, international law, and constitutional law. The Honorable Melissa A. Kotulski, the Founder, Owner, & President of the organization, brings over forty years of experience in these fields—inclusive of rule-making procedures at the local, state, federal, and international levels. In fact, her experience with the centered diplomatic community at the U.S. State Department was buttressed by a direction of her gaze to Regulations.gov whilst further applying Administrative Law (Professors Andy Grewal & John Reitz) after developing expertise in that work in the Nation's capitol and other situses. This led to her advocacy of the platform to the U.S. Supreme Court during the rule changing efforts of 2022, which she sent via U.S. Post because electronic filings were unavailable and which led to the Clerk to send her a laudatory note on the matter.

The milestones of the three-year-old organization to-date have been wide-ranging at each level—

1. Serving as a presiding judge by applying International Court of Justice (ICJ) jurisprudence for the betterment of the next generation of the international law community.

2. Ensuring that national judiciaries were compliant with treaty standards set out by international bodies like G.R.E.C.O. with the U.S. State Department,

3. Engaging with ICJ and International Law Commission (ILC) activities in a formal setting at the General Assembly of the United Nations.

4. Conducting a series of blogposts dedicated in relevant part to the study of Federal Courts and Affairs, including an understanding of the rules-based processes in the U.S. and beyond its borders.

5. Analyzing intensively the hot zones of Israel and Russia/Ukraine, amongst other places around the globe that involve U.S. military and government as well as UN engagement—even attending the emergency session for Israel in late 2023 at the General Assembly of the United Nations.

6. Immersing herself in U.S. Supreme Court jurisprudence from an early age, inclusive of studies through George Washington University, George Mason University, and the U.S. Supreme Court Historical Society.

Throughout all of this time, Judge Kotulski has continued to deepen her understanding of rules-making engagement in the context of international law arenas with her profound understanding of the procedures in part arising out of the legacy of the American Bar Association's Rule of Law communities (currently overseen by former Justice Stephen Breyer). International Attestations, LLC has several other forthcoming projects, including supporting the Honorable Kotulski in her efforts to serve as an advocate at international courts with an aspiration to continue to serve as a judge and an arbitrator. Some say she may even be amongst the candidates for the next ICJ judge for the United States of America.

TABLE OF AUTHORITIES

U.S. Constitution (not *in exclusio*)

Art. I, §8, cl. 3 (commerce)
Art. II, §2 (Treaties)
Art. III, §2 (cases and controversies)

Rules

Fed. R. of Appellate Procedure (2025).
Rule 15. Review of Enforcement of an Agency Order—How Obtained; Intervention.

Fed. R. of Bankruptcy Procedure (2025).
Rule 2002. Notices.
Official form 101. Voluntary Petition for Individuals Filing for Bankruptcy.
Official form 106C. Schedule C. The Property You Claim as Exempt.

Fed. R. of Civ. Procedure (2025).
Rule 7.1. Disclosure Statement.
Rule 26. Duty to Disclose; General Provisions Governing Discovery.
Rule 41. Dismissal of Actions.
Rule 45(b). Subpoena (Service)
Rule 45(c). Subpoena (Place of Compliance)
Rule 81. Applicability of the Rules in General; Removal Actions.

Fed. R. of Criminal Procedure (2025).
Rule 17. Subpoena.

Fed. R. of Evidence (2025).
Rule 609. Impeachment by Evidence of a Criminal Conviction.
Rule 707. Machine-Generated Evidence.

International Court of Justice Selected Jurisprudence

1. *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v. United States of America).*
2. *Applicability of Art. VI, Section 22 of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion of 15 December 1989.*
3. *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Order of 15 October 2008.*
4. *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. UAE), Judgement of February 4, 2021.*
5. *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Judgment of 8 November 2019 (Preliminary Objections).*
6. *Application of the International Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007.*
7. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment of 3 February 2015.*
8. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment of 19 December 2005.*
9. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda, Judgment of 9 February 2022.*
10. *Certain Iranian Assets, Judgment of March 30, 2023*;
11. *Certain Iranian Assets, Judgement of March 30, 2024*, Separate Opinion of Judge ad Hoc Barkett (USA).
12. *Jadhav (India v. Pakistan), Judgment of 17 July 2019.*
13. *Obligations of States in Respect of Climate Change*, Advisory Opinion of July 23, 2025.

International Court of Justice Jurisprudence (continued)

14. *Obligations of States in Respect of Climate Change*, Written Statement of the Organization of the Petroleum Exporting Countries (OPEC), March 19, 2024.
15. *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment of 20 April 2010.*
16. *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion of 28 May 1951.*
17. *Whaling in the Antarctic, Judgment of 31 March 2014.*

International Law Commission Rapporteur Regimes
(Chronological)

Representation of States in their Relations with International Organizations of a Universal Character (1959-1971: Abdullah El-Erian of Egypt).

Treaties concluded between States and international organizations or between two or more international organizations (1970-1982: Paul Reuter, France).

Status, privileges and immunities of international organizations, their officials, experts, etc. (1976-1992: Leonardo Días-González of Venezuela; Abdullah El-Erian of Egypt).

Responsibility of international organizations (2002-2011: Giorgio Gaja, Italy).

U.S. Supreme Court Jurisprudence

Bost v. Illinois State Board of Elections, Oral Argument Transcript, Kagan Question (2025).

Bost v. Illinois State Board of Elections, Slip Op. 24-568 (2026) (Jackson, J., dissenting).

Clinton v. New York, 524 U.S. 417 (1998) (Stevens, J.) (overruled by the Line-Item Veto Act).

Raines v. Byrd, 521 U.S. 811, (1997) (Rehnquist, CJ).

Other Sources

Federal rules of the English-Language nations listed in Constitutions Section (skimmed).

Testimonies of those on Civil Procedure (January 27, 2026).

Federalist Papers Numbers 9, 15, 17, 18, 19, 22, 23, 29, 36, 42, 45, 47, 59, 69, 81.

WRITTEN COMMENTS

I. INTRODUCTION: INTERNATIONAL ATTESTATIONS ENCOUNTERS THE JUDICIAL CONFERENCE RULE CHANGES FOR 2026

The Judicial Conference of the U.S. (2025-2026) has accomplished some great milestones with the current set of proposed rule changes. First and foremost, they showed that shifts in court proceedings can and will be modulated, that the concept of finality does not apply, and that experience with the rules can come in many forms.

Published for comment on August 15, 2025, all five (5) categories of the Rules have at least one change this year: Appellate (1), Bankruptcy (3), Civil (4), Criminal (1), and Evidence (2). The Appellate Rule change in Rule 15 (Review or Enforcement of an Agency Order—How Obtained; Intervention) provides avenues for improving on the trap of "incurably premature" by adding a new part (d) before intervention and fees (new [e] and [f]) that mandates party filing of a new or amended petition for review when challenging the disposition of a petition for rehearing, reopening, or reconsideration. The next change to the Rules is the Bankruptcy Rule 2002 (Notices) and the Forms 101 (Voluntary Petition for Individuals Filing for Bankruptcy) and 106C (Schedule C: The Property You Claim as Exempt). The first change to the Bankruptcy Rules provides for a change in the caption expected on filings as prescribed by Rule 1005 as arising in Form 416B. The form-based changes clarification for elicitation of Employer Identification Number (EIN) for business filers and not the business hiring the individual filer (Form 101) and clarification for "assets exempted" (Form 106C).

Like the Appellate and Bankruptcy rule changings, no oral proceeding arose for the Civil Rule 81(c) concerning whether and when to consider a jury demand (if at all) after removal from the state courts to federal courts, in particular, should be in by the Rule 38 deadline. From the testimonies attended by Judge Kotulski,[2] the participants had a robust consideration of Rules 7.1, 41 and 45 concerning business organizations and remote testimonies, while Rule 26 on claims based as opposed to actions-based dismissals were merely touched upon. The Committees for Evidence and Criminal Rules also gave the public the opportunity to be heard in oral testimonies. The Criminal Rule proceedings centered on Rule 17 subpoena authority with an analysis of the materiality standard, application to proceedings other than trial, codification of a standard of likely admissible, requisites for motions and orders, and issues pertaining to *ex parte*, production, disclosures, and clarification of proceedings. There were two proposed Evidence Rules, including one considered herein about machine-generated evidence admissibility in Rule 707 as well as Rule 609 concerning when and how to question the validity of criminal defendants. Some themes relevant in the rules are 1. reliance on reference to other rules as the manner for which to incorporate the change (Appellate 15, Bankruptcy 2002, Civil 81, Civil 41, Civil 45, Civil 26), 2. Responses to technological impacts of procedure (Civil 26, 45, Evidence 707), and 3. Subpoena mechanisms (Civil 45, Criminal 17).

The committees for each are comprised of legal professionals from government agencies and courts, law firms of varying sizes from sole practitioner to large practices, private corporations, think tanks, and non-profit organizations. The testimonies, on the whole, came from individuals that have a range experience in the U.S. Courts, but almost all had some experience with those systems.

[2] This may change to all testimonies if transcripts are published before comment is made.

By the time testimony was provided for Civil, Criminal (2), and Evidence (20), Civil comments were the most prolific at 150.[3] Evidence had two days of testimony on January 15 and 29, 2026, Criminal and Civil had one day each on January 22 and 27, respectively.[4] Judge Kotulski sought and was permitted to give testimony with International Encouragements, the outline for which she transmitted on January 13, 2026.[5] Her Civil Rules testimony reflected the comments herein concerning the judicial conference in their getting claims with a caution about line-item vetoes, getting technology with cyber marshals and deputies, and getting business organizations. The preponderance of Judge Kotulski's testimony, entitled International Encouragements, centered on the shift to "business organizations" from "corporations" in Rule 7.1 by contextualizing them with three principal judgments and corresponding opinions and comments at the International Court of Justice (ICJ)[6] and her ongoing cautions concerning the International Law Commission (ILC) without an American[7] on that body. She lauded the Committee for seeing the importance of making that lexicographical shift and for being amongst the U.S. institutions that are showing compliance with the *Certain Assets* opinion.

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[3] Appellate 2 and Bankruptcy 5.

[4] The others, Appellate and Bankruptcy, were canceled due to a pending government shutdown.

[5] Judge Kotulski had originally sought to give testimony on all five bodies of rules, then there was a proposed government shut down so she parsed it down to two—for which she provided outlines. In the end, she gave testimony at the Civil proceedings and canceled her Evidence testimony on January 29, 2026.

[6] *Certain Iranian Assets, Judgment of March 30, 2023*; *Certain Iranian Assets, Judgement of March 30, 2024*, Separate Opinion of Judge ad Hoc Barkett (USA); *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. UAE), Judgement of February 4, 2021*; *Obligations of States in Respect of Climate Change*, Advisory Opinion of July 23, 2025; *Obligations of States in Respect of Climate Change*, Written Statement of the Organization of the Petroleum Exporting Countries (OPEC), March 19, 2024.

[7] Argentina, Brazil, Chile, Ecuador, and Nicaragua are the nations from the current nations from the Americas. The U.S. has not had a member on the body, as stated in Judge Kotulski's testimony, "almost unprecedented" since the only other time of the International Law Commission's history was from 2007-2011. The other four permanent members France had one gap in 2017-2020, Russia had theirs from 1987-1991 & 2012-2014

During those proceedings, Judge Kotulski was influenced by a number of the testimonials,[8] even commenting during hers on the astuteness of Tobi Millrood's excellent description of the distinguishability between procedural and substantive location of remote witnesses and the judges who hear the cases,[9] and taking the opportunity to show Exxon Mobil through Mr. Levy some of her observations about the well-rounded written statement at the ICJ by the Organization for Petroleum Exporting Countries (OPEC) in the context of the *Climate Change Opinion*.[10]

Four of the five rules were considered during the Civil Rules testimony. The Rule 7.1 comments centered on instructions for judge recusal (Levy), informal and formal conduct of business (Levy), third party litigation (Allman), conflicts of interest (Allman, Levy, Redgrave), direct/indirect clarification (Allman, Levy, Redgrave), and publicly-traded issues (Redgrave). Rule 41 was considered for its context with multiparty civil rights cases (Hendler) and statute of limitations (Hendler). Finally, the themes of Rule 45 centered on the benefits of live testimony, even when remote (Barnes, Dahl, Damour, Levy, Millrood). There need to be "safeguards to ensure the integrity of trial" (Millrood), a Rules Enabling Act issue (Levy), and Subpoena and Process Service Power Issues (Levy, Varlack).

[8] Judge Kotulski attended the testimonies of Thomas Allen (retired General Counsel of BASF) and Jonathan Redgrave (Redgrave LLP) discussed Rule 7.1 and 45, Scott Hendler (Hendler Flores Law) and Tobi Millrood (Kline & Specter) considered Rules 41, with the latter also looking into Rule 45 along with Lauren Barnes (Public Justice), Xiomara Damour (Mayer Brown), Alex Dahl (Lawyers for Civil Justice), Robert Levy (Exxon Mobil), Tiega Varlack (Varlack Legal Services) and Rachel Downey (Hagens Berman). Due to other obligations that day, Judge Kotulski was unable to attend Navan Ward of Beasley Allen, Steven Fleischman of Horvitz & Levy, Brian Fitzpatrick of Vanderbilt, Matthew Moeller of the Moeller Firm, Mary Novacheck of Nelson Mullins, John Southerland of Huie, Fernambucq & Stewart (she heard the end of his testimony), and Rachel Downey (she heard the beginning of her testimony).

[9] Attorney Millrood noted that procedurally witnesses are likely considered in their place of testimony, while substantively the testimony takes place in the place of the judge. He was giving testimony for the American Association for Justice.

[10] Judge Kotulski offered to receive questions through February 10, 2026, at which time she planned to upload her comments.

From the Committee,[11] chaired by Judge Sarah Vance, many of the questions came from Andrew Bradt, Judge Lauck Rick Marcus, Judge Vance, and David Wright. Some of Mr. Bradt's questions centered on formal and informal business conduct (Levy), the problematics of Rule 43 (Levy), and dismissing a party from litigation without dismissing claims against the party (Hendler). Mr. Marcus was concerned with matters like the cost of Rule 43 compliance (Levy), ambiguity of party dismissal in Rule 41 (Levy), place of testimony (Millrood), prior order requirement (Allman), and the implications of the Kirkland decision in rule 45 proceedings (Redgrave). Judge Lauck was posed questions about remote live testimony qualitative differences (Redgrave), and Judge Vance touched upon questions of ambiguity (Redgrave), acquisition of subpoenas without approval (Millrood), and codes of conduct (Levy).[12]

[11] The Chairs influencing these Rules were the Honorable Robin Lee Rosenberg (U.S. District Court, Southern District of Florida) and the Honorable Sarah S. Vance (U.S. District Court, E.D. Louisiana). The 2025-2026 Reporter and Associate Reporter were Richard L. Marcus (University of California, College of Law, San Francisco, California) and Andrew Bradt (UCAL Berkeley, Berkeley, California), and the members were Honorable Cathy Bissoon (U.S. District Court, Pittsburg, PA, W.D. of Pa.), Honorable Jane Bland (Supreme Court of Texas, Austin, Texas), David J. Burman, Esq. (Perkins Coie, LLP, Seattle WA), Honorable Annie Christoff (U.S. District Court, W.D. Tenn.), Professor Zackary Clopton (Northwestern U., Pritzker School of Law, Chicago, IL), Honorable David C. Godbey, U.S. District Court, N.D. TX), W. Mark Lanier, Esq. (The Lanier Law Firm, Houston, TX), Jocelyn D. Larkin, Esq. (Impact Fund, Berkeley, California), Honorable M. Hannah Lauck (U.S. Dist., E.D. Virg.), Honorable R. David Proctor (U.S. Dist., N.D. of Alab.), Honorable A. Marvin Quattlebaum, Jr. (U.S. Court of Appeals for the Fourth Circuit), Honorable Manish S. Shah (U.S. Dist., N.D. Il), Brett A. Shumate, Esq., AAG (ex officio) (U.S. Department of Justice, Washington, D.C.), David C. Wright, III (Robinson, Bradshaw, Hinson, P.A., Charlotte, NC). Joseph M. Sellers, Esq. (Cohen, Milstein, Sellers & Toll) was no longer on the committee. Liaisons to the Committee were the Honorable D. Brooks Smith (U.S. Court of Appeals for the Third Circuit) and Honorable Catherine P. McEwen (U.S. Bankruptcy Court, M.D. Fla.), and the consultant and clerk of court representative were, respectively, Professor Edward H. Cooper (Michigan Law, Ann Arbor, MI) and Thomas G. Bruton (U.S. Dist. Court, Dist. N.D.).

[12] Mr. Wright asked questions as well, the substance for which are not clear in Judge Kotulski's notes.

It is in this context that Judge Kotulski and International Attestations is getting principal encouragements to the Rules Committees for Civil and Evidence. First, there are considerations of what—if any—applicability the jurisprudence of line-item vetoes may have on finalizing the development of the Claims- versus Actions-based dismissals (Civil Rule 41). Next, the comments delve into commendations and cautions for perfecting legal terms of arts like Business Organizations (Civil Rule 7.1). The final thing to get to is technology, whether and how to account for new technology in remote testimonies (Civil Rule 26 and 45) as well as machine-based evidence (Evidence Rule 707).

II. PRINCIPAL ENCOURAGEMENTS BY INTERNATIONAL ATTESTATIONS

The principal comments by International Attestations centers on encouraging the Judicial Conference for getting claims, getting business organizations, and getting technology by reviewing and revising certain civil and evidence rules.

A.) Getting Business: Commendations & Cautions for Better Perfecting Legal Terms of Art through the Use of "Business Organizations" (Civil Rule 7.1)

Organizational and corporate discourse buttresses the analyses of the Constitution. The Government is considered in the context of its organization, Federalist 23, and the Union of the nation has an organization that is intimate and wiser than the ancient Greeks. Federalist 18. Indeed, all branches of government and the many States have a prance with the organization in the words of the Federalist drafters pursuant to the conception of "the organization of the national government" Federalist 59 (Concerning the Power of Congress to Regulate the Election of Members). The Founders speak of the "distinct and independent organization of the Supreme Court" Federalist 81 (The Judiciary Continued, and the Distribution of the Judicial Authority) as well as its "organization of the judicial power" corresponding in the States. Federalist 45 (The Alleged Danger from the Powers of the Union to the State Governments Considered). In one instance, the mass of the judiciary was even compared to taxation powers! Federalist 36. "Corporate bodies" are described in the Real Character of the Executive. Federalist 69. The military's organization (and discipline) is considered in the context of its beneficial effects on the science of war. Federalist 29. And, of course, Congress is considered an organization as well. Federalist 22.

"The State governments may be regarded as constituent and essential parts of the federal government; whilst the latter is nowise essential to the operation or organization of the former." Federalist 45 (The Alleged Danger from the Powers of the Union to the State Governments Considered). Organization in Number 47 as well, but Number 42 says that heads of the substates are a distinct class. State and governments in their corporate in opposition to their collective capacities. Federalist 15. State's interior organizations with heightened military laws shows a "vice of the constitution" and the "deformities of a political monster" when ill-organized. Federalist 19. The "assemblage of societies" in a confederate republic must protect the separate organization of the members—lest abolition arise! Federalist 9. And even at the micro-sub-state level…Officers of corporations are listed as amongst officers of counties and towns. Number 45.

This is not exclusive to the United States of America. There even appears to be a warning to other nations forming constitutions—the U.S. having the eldest in all the lands of the world and standing as the inspiration for scores of all other nations. Federal constitutions—even risk over-organization—as it should be easy to give them liberty. Federalist 17. And there is a lesson when giving them…Mr. Hamilton…death, perhaps? Heck, he wasn't the only one writing on corporations and organizations. Madison had 8 to his 14 mentions.

Concerning Business Organizations in Rule 7.1, International Attestations presents commendations and cautions to the Civil Rules Committee. First, the progression of Rule 7.1 indicates compliance with international law, mores and standards concerning corporates qua "business organizations."

Many International Court of Justice cases have considered organizational and corporate measures. At testimony, Judge Kotulski discussed two contentious—*Certain Assets* (Iran v. USA) and *Racial Discrimination* (Qatar v. UAE)—and one advisory opinion—*Climate Change Obligations*. [13] There are indeed several others to consider in the context of the distinguishability and overlapping definitions of the two terms of art in the international realm.[14] But there's many other cases. Of the 46 cases considering corporations in some fashion, corporate comes through in a variety of ways. "Corporation" is used when "incorporating" treaties and national or subnational bodies, and even when considering what's happening "behind the corporate veil." Whereas organization clearly denotes beyond government. Making sure to understand that corporations may well be important to keep in the mix as of now international organizations in the international legal regime are intergovernmental organizations as opposed to private organizations.

The U.S. did not fare well in the minds of the international legal community in *Certain Iranian Assets*. Our nation was found to fail to meet obligations in a treaty of amity with Iran, and we have been ordered to compensate Iran through an agreement. And any questions of such compensation might be brought back to the Court. Of the four former Presidents of the Court giving separate opinions, Judge Tomka (Serbia)—the longest currently serving member—made note that Iran does not explain why corporate form should be inviolable or unpierceable. Judge Barkett (USA) responded to one of the seeming violations of the nation by stating that "Corporate status should be recognized [to] assure [the] right [of] foreign corporate entities…[to] free access [to] courts [to] collect debts, protect patent rights, enforce contracts, etc."

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[13] *Certain Iranian Assets, Judgment of March 30, 2023*; *Certain Iranian Assets, Judgement of March 30, 2024*, Separate Opinion of Judge ad Hoc Barkett (USA); *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. UAE), Judgement of February 4, 2021*; *Obligations of States in Respect of Climate Change*, Advisory Opinion of July 23, 2025; *Obligations of States in Respect of Climate Change*, Written Statement of the Organization of the Petroleum Exporting Countries (OPEC), March 19, 2024.

[14] Of the 46 cases considering coropr,

Qatar v. United Arab Emirates did not get to the merits, in part, because of the media corporations indicating that they were not being racially discriminant against Qataris in the UAE. Although they have proceeded to race on the merits in other cases, the ICJ did not consider that the UAE was culpable. Our nations Courts and Corporations may well have been lured to let the United States of America Government of 2016-2023. Some of those corporations are now backing the current presidential regime, which may not bode well for the Jerusalem case. That said, the Nobel Prize for Peace may well go to a Democratic leader if they can sway corporations to protect him even though the Republican discord may well have been associated with the loss at the ICJ for the U.S.A. That written, International Attestations strongly believes that Judge Kotulski—with her particular set of professional and personal experiences and expertise—would have helped the U.S. win the case, and hopes she can get to prove that with future endeavors.

These two contentious cases have led up to *Climate Change* Opinion, in which nearly 100 nations of the United Nations and several international organizations participated. The opinion of the Court considered the environmental concern in the context of obligations and consequences of States, even providing a pathway for some business entity participation in the discourse. Obligations were formed under the treaty, protocol and agreement frameworks, international law, environmental treaties, law of the sea and sea level, and human rights law. Consequences concerning climate change context (attribution, causation, underlying obligations) and wrongful acts (performance, cessation and guarantees of non-repetition, reparation), and reparation duties (restitution, compensation, and satisfaction). So it's not surprising that so many nations wished to participate in the discourse.[15] Most notably, the Organization for Petroleum Exporting Countries (OPEC) showed a good-faith concern not just about corporate responsibility but a duty to humanity.

[15] Another example of an opinion with extensive involvement of the United Nations community members arose during the Unilateral Declaration of Independence for Kosovo. Perhaps indicating a precursor for Ukraine, though they may have preempted it by filing both in the International Criminal Court (ICC) and ICJ at the commencement of hostilities in 2022.

"Organizations" has almost from the start been a pressing topic at the International Law Commission (ILC), which is responsible for the development and codification of international law. Right now, the "international organization" topics of note concern the Settlement of international disputes to which international organizations are parties, which has August Reinisch (Austria) as the special rapporteur responsible for managing the continued research progress of the matter in the ILC.[16] Since Giorgio Gaja's "Responsibility of International Organizations," responsibility has been the international topic *du jour*.

And it seems that with Certain Iranian Assets, that topic is heading towards States.

This development of "organizations" at the international level, that may be instructive through analogy, arose under the direction of Paul Reuter with "Treaties concluded between States and international organizations or between two or more international organizations." This treaty is so narrow that perhaps it barely has consequence or affect. It comes through in part with its non-retroactivity provision. This may be instructive for "business organizations." And while we do not have a member at the ILC, we now have a relatively new Judge on the ICJ. So we need to be on our best behavior…

[16] Treaties concluded between States and international organizations or between two or more international organizations (1970-1982: Paul Reuter, France). Others have been (Chronologically): Representation of States in their Relations with International Organizations of a Universal Character (1959-1971: Abdullah El-Erian of Egypt); Status privileges and immunities of international organizations, their officials, experts, etc. (1976-1992: Leonardo Días-González of Venezuela; Abdullah El-Erian of Egypt); Responsibility of international organizations (2002-2011: Giorgio Gaja, Italy). Of late, the last is oft-quoted, particularly since the special rapporteur became a member of the ICJ from 2012-2021.

B.) Getting Claims: The Line-Item Veto May Be Good Law to Look to in Claims Versus Actions Based in Civil Rule 41

In the ICJ context, what we would have once called "line-item vetoes" arise with each individual claim being decided upon. This makes for a clear pathway to getting to the merits most of the time when cases are brought to the ICJ.

The jurisprudence dedicated to the line-item veto may well encourage the Judicial Conference of the U.S. as well as Congress to provide for better-improved claims-based methods for proceeding with cases in the U.S. Courts systems given proposed changes to Civil Rule 41.

Although initially dismissed for lack of standing reasons in a U.S. substate consideration of the line-item veto, whereby members of Congresses did not have sufficient personal stake for concrete injury to arise to Article III standing, Chief Justice Rehnquist discusses the concept in dicta in the context of all other types of vetoes such as Tenure of Office Act, one-House, pocket, and others done by Presidents Wilson, Grant, Cleveland, Coolidge, and others. *Raines v. Byrd*, 521 U.S. 811, (1997). This need to switch to a more specified dismissal of matters could be foreseen in Justice Stevens as well as Justice Breyer decisions. Perhaps Justice Thomas recalled that standing discourse whence providing his opinion about the Appropriations Clause in relationship to the Consumer Financial Protection Bureau. This discourse even has some appearance with the third decided opinion for the 2025 term, with regard to consideration of candidates as direct objects. *Bost v. Illinois State Board of Elections*, Slip Op. 24-568 (January 14, 2026) (Jackson, J., dissenting), Oral Argument with Kagan Question. Perhaps the principal case that seems to be well-settled is *Clinton v. New York*, 524 U.S. 417 (1998) (Stevens, J.) (overruled by the Line-Item Veto Act).

In sum, I encourage, make all due haste for such claims-based attention. It's time to better train those negotiating the U.S. Courts—advocates, parties, judges, and staff—to be prepared for the international implications of their decisions – procedural, substantive, or otherwise.

C.) Getting Technology: Whether and How to Account for New Technology (Civil Rule 26 & 45; Evidence 707)

Three of the rules considered by International Attestations respond to technological advances: Civil Rule 26 (Express Statement on Remote or In Person Testimony), Civil Rule 45 (Place for Remote Testimony (Rule 45), & Evidence Rule 707 (Machine-Based Evidence Admissibility). Judge Kotulski is no stranger to policy, procedural, and scholastic approaches to the cyber world. Judge Kotulski has focused and enhanced her expertise on cyber matters since attending a closed/cleared meeting at Georgetown's School of Diplomacy in 2011, helping to shape and take a class at Iowa Law in 2013 and 2014, influencing Cyber Endeavors and military engagements[17] at the Naval Postgraduate School (2014) and MITRE (2015), and continuing her 2014 argument for a cyber treaty with scholarship conducted privately, Doc. 3.5 (Wither the Cyber?).[18] In fact, I posited whether or not separate matters pertaining to cyber may be called for before the most recent UN Convention against Cybercrime (2024) came out. A gap still remains for much of the cyber realm in the civil worlds, and, perhaps, an opportunity passed to make a more all-inclusive treaty dedicated to cyber matters.

[17] Making note of this during her testimony.
[18] This publication came out around the same time as the Cyber Crime Treaty, which exclusively addresses Criminal Matters.

As Judge Kotulski stated in her testimony, there are more things that still need to get done concerning remote testimony. She encouraged the committees to begin thinking about "cyber marshalls" and "cyber deputies" that have the jurisdiction to wrangle in all the moving parts. These moving parts must be wrangled when the wrangling is ready in order to get appropriate judicial oversight on the matter.

Case in point, Evidence Rule 707 seeking machine-generated evidence admissibility is not ripe for implementation. Unless the Court wishes to secure scores more extraneous litigation based on potentially inefficient rules, the Judicial Conference might be best-suited to consider further the implications of such technologically-generated evidence. Because Rule 707 is so referential to Rule 702, perhaps the latter may become that which is commented upon and all revisions be rolled into the application of that rule. The way it stands at present, it seems like no rule at all. No matter what the Civil Rules Committee puts out there, the subject of the rule is ripe to generate litigation, confusion, and controversy. As such, the goal may be to limit the volume of litigation, confusion and controversy by bringing the rule to market when it is ready, not by bringing it to market to vet what that litigation, confusion and controversy yields.

Indeed, three years is a goodly amount of time to review a rule ahead of publication, but one more year may yield a more thorough understanding of how to attend to this particular type of evidence.

Or maybe you have determined from your review that Rule 702 sufficiently addresses such evidential standards for admissibility. In which case, it's better not to single it out and it's better to stick to the old mainstays and their litigation, confusions and controversies

III. **CONCLUSION**

The Rules Committees of 2026 are showing a strong proclivity of "getting it." They are getting it right, getting it done, and getting to the heart of the matter in getting claims, getting business organizations, and getting technology. There are some matters that need adjustment—but now it seems the Court is getting it.

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Document 1. International Attestations & Honor Use Licensing

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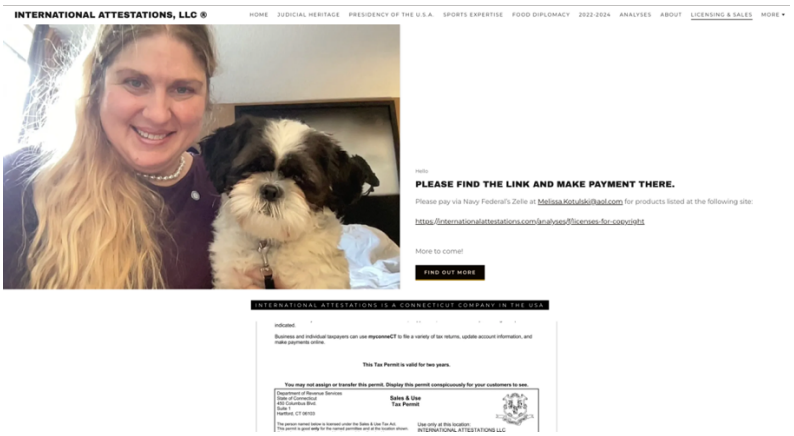

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Document 2. Testimony (Civil Rules 7.1, 26, 41, 45; Evidence 707) Outline, Notes on IA Testimony, Notes on Other Testimonies

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Document 2.1 Original Outline

INTERNATIONAL ENCOURAGEMENTS (CIVIL)

(January 27, 2026)

International Encouragements for Proposed Changes to the Federal Rules of Civil Procedure

BIOGRAPHICAL STATEMENT

RULES TO CONSIDER IN THE INTERNATIONAL CONTEXT

- Nongovernmental business organizations (Rule 7.1)
- Narrowing Voluntary Dismissal to Claims Rather than Entire Action (Rule 41)
- Remote Testimony/Technological
    1. Express Statement on Remote or In Person Testimony (Rule 26)
    2. Place for Remote Testimony (Rule 45)

ENCOURAGEMENTS (EVIDENCE)

International Encouragements for Proposed Changes to the Federal Rules of Evidence

Machine-Generated Evidence Admissibility (Rule 707) Outline: No Rule At All?

a. Biographical Statement (Self, International Attestations, cyber/tech law expertise)
b. Litigation, confusion, controversy
c. No Rule at All? Comment

Document 2.2 January 27, 2026: Civil Rules 7.1, 26, 41, & 45

Original Outline
(Submitted January 13, 2026)

INTERNATIONAL ENCOURAGEMENTS (CIVIL)

(January 27, 2026)

International Encouragements for Proposed Changes to the Federal Rules of Civil Procedure

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- Narrowing Voluntary Dismissal to Claims Rather than Entire Action (Rule 41)

- Remote Testimony/Technological
    1. Express Statement on Remote or In Person Testimony (Rule 26)
    2. Place for Remote Testimony (Rule 45)

Notes from Hon. Kotulski's Testimony About Civil Rules 7.1, 26, 41, 45

ENCOURAGEMENTS (CIVIL)

(January 27, 2026)

International Encouragements for Proposed Changes to the Federal Rules of Civil Procedure

A. **Gratitude to Organizations**: Rules Committee Staff, Administrative Office of the Courts, and Civil Procedure Team

B. **Introduction to her**: 20 years of diplomacy; Expert in International Court of Justice, ILC, CAS, UNSC; U.S. Supreme Court; codification and development of international law as presented by the ILC and other organizations. Commend Committee for their compliance with international law for places going against USA.

C. **Substantive Remarks**

1. **Claims Dismissal Rather than Action as a Whole** – line item veto days may come back to haunt folks with this rule. Narrowing Voluntary Dismissal to Claims Rather than Entire Action (Rule 41)

2. Remote Testimony/Technological (Rules 26 & 45). Express Statement on Remote or In Person Testimony (Rule 26). Place for Remote Testimony (Rule 45). The concept of a **cyber marshal and deputy** for each of the remote geographic locations in a remote court to be linked for keeping such testimonies legitimate, authenticated, and included.

3. Nongovernmental Business Organization (Rule 7.1)
    a. Three principal ICJ cases: Certain Assets – I see this rule change as one of the methods of **compliance** with the Iranian case against the US (one of two currently at the ICJ). Read out Barkett quote: Corporation status comes up in III, para. 1 with instructions indicating "Corporate status should be recognized [to] assure [the] right [of] foreign corporate entities…[to] free access [to] courts [to] collect debts, protect patent rights, enforce contracts, etc."
    b. Qatar v. United Arab Emirates issues of media organizations.
    c. Climate Change Advisory Opinion. Allowed for some business entity participation in the conversation. Most notably, the Petroleum Exporting Countries, showing a concern not just concerning corporate responsibility but a duty to humanity, and, to the extent that it is a business, International Union for the Conservation of Nature

4. Questions here or by February 10, 2026 over the phone or in writing. My contact information is at Tab 5.

Notes from the Testimonies of Others (18) on January 27, 2026[19]

Rule 7.1 Nongovernmental Business Organization (4)

A. (3) Thomas Allman a Retired General Counsel of BASF Corp. (Rule 7.1 & 45)
B. (4) Jonathan Redgrave of Redgrave LLP (Rule 7.1 & 45)
C. (5) Melissa Kotulski of International Attestations (Rules 7.1, 26, 41 & 45)
D. (14) Robert Levy of Exxon Mobil (Rules 7.1, 26 & 45)

[19] Number in the front of the names in parenthesis is place in the lineup for testimonies for the day.

Rule 26 Express Statement on Remote or In Person Testimony (2)

A. (5) Melissa Kotulski of International Attestations (Rules 7.1, 26, 41 & 45)
B. **(14) Robert Levy of Exxon Mobil (Rules 7.1, 26 & 45)**

Rule 41 Narrowing Voluntary Dismissal to Claims Rather than Entire Action (3)

A. (1) Scott Hendler of Hendler Flores Law (Rule 41)
B. (2) Tobi Millrood of Kline & Specter (Rule 41 & 45)
C. (5) Melissa Kotulski of International Attestations (Rules 7.1, 26, 41 & 45)

Rule 45 Place for Remote Testimony (17)

A. (2) Tobi Millrood of Kline & Specter (Rule 41 & 45)
B. **(3) Thomas Allman a Retired General Counsel of BASF Corp. (Rule 7.1 & 45)**
C. **(4) Jonathan Redgrave of Redgrave LLP (Rule 7.1 & 45)**
D. (5) Melissa Kotulski of International Attestations (Rules 7.1, 26, 41 & 45)
E. (6) Lauren Barnes of Public Justice (Rule 45)
F. **(7) Mary D'Agostino of Hancock Estabrook (Rule 45)**
G. (8) Xiomara Damour of Mayer Brown (Rule 45)
H. **(9) Alex Dahl of Lawyers for Civil Justice (Rule 45)**
I. (10) Navan Ward of Beasley Allen / American Association of Justice (Rule 45)
J. (11) Steven Fleischman of Horvitz & Levy (Rule 45)
K. (12) Brian Fitzpatrick of Vanderbilt Law School (Rule 45)
L. **(13) / Max Heerman of Medtronic (45) Not present**
M. **(14) Robert Levy of Exxon Mobil (Rules 7.1, 26 & 45)**
N. (15) Matthew Moeller of The Moeller Firm (Rule 45)
O. (16) Mary Novacheck of Nelson Mullins (Rule 45)
P. (17) John Southerland of Huie, Fernambucq, & Stewart (Rule 45)
Q. (18) Tiega Varlack of Varlack Legal Services (Rule 45)
R. (19) Rachel Downey of Hagens Berman (Rule 45)

Document 3. Relevant IAUSA Articles (Most Recent First) by the Hon. Melissa A. Kotulski

Document 3.1	UNSC '26: Naturally Casting Latvia's Wooden Breadbasket & Aid Kit (January 12, 2026)	D12
Document 3.2	International Narcotics & Law Enforcement Bureau & ICJ 2022 Redux (November 14, 2025)	D17
Document 3.3	Outside Testimony Submission Dates are Here! (May 5, 2025)	D23
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Document 3.1 UNSC ’26: Naturally Casting Latvia’s Wooden Breadbasket & Aid Kit (January 12, 2026)

The United Nations Security Council (UNSC), per usual, has five new members in 2026-2027. Joining last year's rising class (Denmark, Greece, Pakistan, Panama, and Somalia) and the permanent members (China, France, Russia, the United Kingdom, and the United States of America), Bahrain, Colombia, the Democratic Republic of the Congo, Latvia, and Liberia officially began their two-year tenure on January 1, 2026. Latvia is the freshman in this batch, which leaves it ripe to highlight preparatory measures for the Presidency--a change that happens on a monthly-rotational basis based on placement in the English-language alphabet. It remains to be seen who will be elected to replace this last batch of five at the end of 2026 to determine their final year on the UNSC, by then Latvia will be well-trained in how to coordinate international security.

It will have also likely have served what will be its first and to that time only term as the President of the UNSC.

Latvia in the Context of the ICJ, UNGA, and the UN Security Council

With current top exports of natural gas, packaged medicine, wheat, wood, broadcasting equipment, Latvia is slated to serve as the UN Security Council's (UNSC) President in November. This will be the first time the nation has led any of the major parts of the United Nations--never having a case or judge at the International Court of Justice (ICJ) and never serving as the President of the General Assembly (UNGA) or Economic and Social Council (ECOSOC). The UNSC is a member of the UN System and it's beneficial to be prepared for what Latvia's diplomats and other service members may put on their presidential docket by looking both within the annals of that principal organ in the context of at least two other Charter-based bodies: the International Court of Justice (ICJ) and the General Assembly (UNGA)--which is the body that most often has fed the ICJ with requests for advisory opinions on matters of international law. UN Charter Article 96(1). Still, Latvia may well serve under one of the rare presidencies when the UNSC calls forth its charter-fueled prerogative to request advice on "any legal question."

Like Latvia, other nations amongst the UN Class of 2026 colleagues have only had one other term at the UNSC. Somalia had its freshman term from 1971 to 1972, while Bahrain's was 1998-1999 and Liberia only had one year (1961, without a presidency) for its previous and only other tenure as a non-permanent member of the UNSC. In fact, Bahrain is a great nation for Latvia to look upon as they sought out pacific settlement of dispute help from Guyana, another place closely-situated to your nation's populace. Mohamed Shahabuddeen (Guyana) was Bahrain's selection to serve for the nation as a judge *ad hoc* for its ICJ case on Maritime Delimitation and Territorial Questions defended against Qatar. Judge Shahabuddeen also served as a permanent member of the Court. Still, despite having four cases, Bahrain has never selected a judge ad hoc from its own populace (though they did have a member at the ILC from 1987-2006 with Husain M. Al-Baharna). This is dissimilar to Pakistan, which has had four (4) such judges from its nation and which has even declined to use its ICJ Rules-based Article 35 prerogative to select a judge to sit on the court.

So perhaps Greece, Somalia, Pakistan, & Panama are great nations that Latvia may also observe. Why? Amongst the other non-permanent members of this UNSC class, they each have had one judge serve as permanent members of the ICJ--though Panama has never had a case before the ICJ, perhaps in part because of its six terms at the UNSC (1958-1959, 1972-1973, 1976-1977, 1981-1982, 2007-2008, 2025-2026). Somalia's first case arose recently at the ICJ pacifically-settled against Kenya concerning Maritime Delimitation during the tenure of that nation's Judge Yusuf, whose term ended abruptly last year. With Latvia's first International Law Commission member this year, it bodes well for broadening that nation's ICJ horizons (judge candidacies) by being an advocate for developing and codifying international law with "Compensation for the damage caused by internationally wrongful acts" assigned to Mārtinš Paparinskis as the Special Rapporteur.

Latvians may be preparing to lead the world's security council with some of their own agendas in mind for the tenure of the presidency as well as what they will do after the nation has completed its term.

A Natural Gas Treaty Convention Held in Riga?

The world may be ripe for an international natural gas treaty and an obvious headquarters for the hypothetical treaty-body could be in Latvia's Riga. Such a treaty and treaty mechanism may be managed much in the vein of the Food and Agricultural Organization's (FAO) Headquarters in Rome, Italy--a culinary Mecca--and like the treaties of other commodities such as olive oil and table olives, coffee, sugar, coconuts pepper, cocoa, rice, tin, tea, rubber, jute and jute products, nickel, copper, grains and--perhaps most relevant to Latvia--tropical timber (4) and wheat (2). As a "producer member" as well as a "consumer member" of the Tropical Timber Treaty, Latvians stand uniquely situated to provide advice on the development of treaty provisions related to Natural gas. Tropical Timber Treaty, Art. 2(4) & (5). China, France, and the UK--other principal natural gas importers--may help with this treaty effort as well. An effort that will--if sparked--go beyond Latvia's tenure at the Security Council, which could light a grand legacy for posterity or leave smoldering ashes for which the nation will need to repair. Or both.

Ukraine as Europe's Breadbasket No Longer?

Ukraine, once Europe's Breadbasket, will be an interesting nation for Latvia to bring to the table. Latvians may benefit from not touching Ukraine at all during their November presidency--sending the message on their stance with their recent non-abstention, affirmative votes on Ukraine in the General Assembly.

Such silence could allow to stand what Latvia has stood with Ukraine.

Anything more may seem problematic with both Ukraine and Latvia competing for Wheat exports and with the former's war still raging on. Let Latvia's breadbasket open at the behest of other security powers, unless a major flareup happens leading up to or during Latvia's tenure as UNSC President. Beyond the region, this may also hold true to a lesser extent for Syria, another wheat importer with a somewhat heavy status on the Security Council docket. So perhaps all of the Security Council members can help the Freshman Latvia plan the year by making sure that the breadbasket of UN business in November may be dedicated more so to general resolutions like terrorism and maintenance of international peace or even other business pertaining to Sudan or Yemen.

In sum, Latvia is the world's next freshman whose first ever term as President will offer a great opportunity to enhance and embolden the nation. The best packaged medicine for ensuring peace for a region like Eastern Europe, indeed. Perhaps the marks of success for Latvia would be to broaden Europe's breadbaskets and work towards placement of a treaty headquarters in Riga dedicated to natural gas.

Supplement 1. The List of the Current UNSC Class by Presidency

This year's class, in order of presidency with the end of the nation's term in parenthesis:
January: Somalia
February: United Kingdom
March: United States of America
April: Bahrain (2027)
May: China
June: Colombia (2027)
July: Democratic Republic of the Congo (2027)
August: Denmark (2026)
September: France
October: Greece (2026)
November: Latvia (2027)
December: Liberia (2027)

No presidencies this year: Russia, Pakistan (2026), Panama (2026)

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January 13, 2026 at 12:45 p.m. EST, updated with Supplement on January 26, 2026 at 1:40 p.m. PST.

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If you feel that my works are worth investing in and that you have been influenced by them or even were inspired by them to counter arguments (sparing partners get paid, you know...), please feel free to provide a Zelle Payment for an honor use license payment (HULP) as a means to inspire good faith use licensing. Maybe there are things for which you just want to give because of something you know comes from me and you want to show good faith for that which I have provided: have at it. I'm happy to accept good faith HULPs for that which I provide.
https://internationalattestations.com/licensing-%26-sales

(This appeal for funding is similar to almost all other posts)

Document 3.2 International Narcotics & Law Enforcement Bureau & ICJ 2022 Redux (November 14, 2025)

I intend to revise my Summer 2022 series on the International Narcotics and Law Enforcement Bureau (INL) of the U.S. State Department in the near future. I even put the previous entries in the 7-part regionally-nexused series up on SSRN, which is a nice academic marketplace of ideas where I place some of my older papers like my work on International Organizations and my note on Presidential Sites. I also have publication on Ireland in the International Review of Constitutional Reform.

Though I have had qualifications to do so, I have never worked for agencies like the National Archives and Records Administration (NARA) or the Environmental Protection Agency (EPA). In fact, I even declined an offer at a Presidential Library because the site's work was too focused a topic from which I had graduated and such a position did not provide substantial responsibilities reflective beyond such single vision of biography. Biography that I had mastered under the tutelage of a Pulitzer Prize winning biographer in the early 2000s when working for a historic site dedicated to a single woman and her family (across the street from Mark Twain's place in Hartford, Connecticut). You see, by the time of that lovely NARA employee's offer, I had analyzed multiple continents for their national systems since I worked for the International Narcotics & Law Enforcement Bureau (INL) of the U.S. State Department (State) in 2013-2014.

My State teams barely touched upon the "goods" associated with the first part of that bureau's title. In fact, my foci were on analyzing the nation-based compliance with international legal standards for justice systems--including the judicial, prosecutorial, custodial, and law enforcement prongs of such systems. That meant that I had already assessed how national court systems were acting for treaty compliance--becoming an expert by 2014. So when that inspirational Director asked me to be a marginal part of her local NARA site (all she could at the time), I politely declined because I was ready for international judging across state-lines which is beyond the scope of a single Presidential Library. We left on as amiable terms as the person for whom she ably protected his presidential heritage (a gentleman from the midwest who knew controversy, indeed), and she became a reference to the United Nations for me. She is currently in well-earned retirement.

And since that time, I have researched or visited NARA sites where I have admired many an employee--archivist, director, security guard and more. The same holds true for national court systems, though I have more intimate knowledge as I have ***done*** things like encourage cross-national dialogue on the topics of foreign affairs in their national courts since I was with my INL Bureau teams in 2013/14 and continued independently in 2022 with my 7-part series. In fact, such ***doing*** continues with my hope (that still holds true) for a Summit between the leaders of the constitutional courts of the Ukraine, Russia, and the USA--if the former two could keep their lead judges in place long enough to plan one, I guess. Things have been volatile for the judiciaries of both nations since Lebedev's passing and Kniaziev untimely resignation, perhaps the Russians and Ukrainians and all those in-between would be best served to recall the impressive U.S. District Court judge Margaret McKeown's American Bar Association Rule of Law caution in 2023 about protecting judges from

reprisals. Maybe the ICJ universe might benefit from review of her presentation.

This Ukraine-Russian discourse refers to another sub-series in my Academic Journal Posts.

https://internationalattestations.com/blog/f/ukraines-chief-justice-shows-the-travails-of-a-wartime-judiciary (Ukrainian Chief Justice & His Wartime National Judiciary)

https://internationalattestations.com/blog/f/russia-ukraine-a-us-moderated-dialogue-on-commonalities (Tear Down These Walls encouraging a dialogue on foreign affairs in the national courts of Ukraine, Russia, and the USA).

https://internationalattestations.com/blog/f/russia-the-usa-a-diplomatic-triumph-at-the-icj (An accolade given to the Russian & America judges that concurrently served as Vice-President and President of the ICJ)

As for the EPA, while I hear it's a swanky place to work (voted #1 of all U.S. government agencies), I have encountered it through Water Law, Air Quality Law, Brown Fields Lands, meteorological analyses, local and state interactions with Federal regional systems reporting to the EPA (particularly in Florida, Hawaii, New York, & Vermont, amongst others). And I have applied how environmental law works in the international realm since around the same time as the INL position when I worked at looking at Water Law in a California city in the context of regional, federal, and international law.

Since that time, a very cool summer (in so many ways) on the California coastline considering Pacific appropriative rights and desalination processes--in part--I have mastered the International Court of Justice's (ICJ) climate change and international matters concerning boundary measures across water lines. Just to say that upon doing such research, the law of equidistance may be a starting point, but less frequently the endpoint than the seeming golden rule of national water boundaries provides in ICJ jurisprudence. Just look to the Great Lakes Controversy in Africa, of which now-Judge Okowa (Kenya) helped the world see more in a recent recorded lecture that she gave at the United Nations. I, too, have some writings on the matter, which I hope helped the Office of Legal Affairs of the U.S. State Department and the United Nations in preparing for their work on the Advisory Opinion concerning Climate Change--and maybe even the Kenyan contingent had a glance at some of my writings. Judge Okowa did a fine job bringing her international brands to the marketplace, indeed, and I wish her the best in that position.

My analyses were published soon after the announcement of the opinion in 2023, the published ICJ Advisory Opinion emblazons the obligations more than the consequences...Perhaps the private industries presenting to the Court on the matter helped sway them away from such bottom-line crushers that oftentimes hold up good international industrial and commercial activity.

https://internationalattestations.com/blog/f/icj-advisory-opinions-questions-presented
https://internationalattestations.com/blog/f/consequences-and-advisory-opinions-at-the-icj

I have also considered the regional and state level environmental matters with the USMCA and the state-level courts of the U.S.A. (see below).
https://internationalattestations.com/blog/f/the-usmca-the-eca-government-involvement-public-participation
https://internationalattestations.com/blog/f/environmental-courts-at-the-state-level

Still, in order to stay current for my INL overlap with ICJ matters, I have compiled that seven-part series b as a reprint below to prepare for the updated version. The series focuses on the regional side of collaboration with the U.S. on federal law enforcement matters whilst also considering which nations in that cadre had activity at the ICJ.

Stay tuned for my forthcoming INL & ICJ analyses Redux...

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November 14, 2025 at 1:13 a.m., tidied up on January 19, 2026 at 11:00 a.m.

Reprinted below INL Homecoming Pt. 1- Pt. 6b: Tuesday, July 12, 2022, 9:00 a.m.; Tuesday, July 19, 2022 at 9 a.m.; July 26, 2022, 9:00 a.m.; August 2, 2022, 9:00 a.m.; August 9, 2022, 9:00 a.m.; August 16, 2022, 9:00 a.m.; August 23, 2022, 9:00 a.m.

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If you feel that my works are worth investing in and that you have been influenced by them or even were inspired by them to counter arguments (sparing partners get paid, you know...), please feel free to provide a Zelle Payment for an honor use license payment (HULP) as a means to

inspire good faith use licensing. Maybe there are things for which you just want to give because of something you know comes from me and you want to show good faith for that which I have provided: have at it. I'm happy to accept good faith HULPs for that which I provide. https://internationalattestations.com/licensing-%26-sales

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INL Homecoming Pt. 1 -- Sub-Saharan Africa
INL Homecoming Pt. 2: East Asia & the Pacific
INL Homecoming Pt. 3 -- Europe & Eurasia
INL Homecoming Pt. 4 -- Middle East & North Africa
INL Homecoming Pt. 5 -- South & Central Asia
INL Homecoming Pt. 6a & 6b -- Western Hemisphere

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(1) Sub-Saharan Africa: https://internationalattestations.com/blog/f/an-inl-homecoming
(2) East Asia & Pacific: https://internationalattestations.com/blog/f/inl-homecoming-pt-2-east-asia-the-pacific
(3) Europe & Eurasia: https://internationalattestations.com/blog/f/inl-homecoming-pt-3—europe-eurasia
(4) Middle East & North Africa: https://internationalattestations.com/blog/f/inl-homecoming-pt-4--middle-east-north-africa
(5) South & Central Asia: https://internationalattestations.com/blog/f/inl-homecoming-pt-5--south-central-asia
(6a) Western Hemisphere: https://internationalattestations.com/blog/f/inl-homecoming-pt-6--western-hemispher
(6b) Western Hemisphere: https://internationalattestations.com/blog/f/inl-homecoming-conclusion

Document 3.3 Outside Testimony Submission Dates are Here! (May 5, 2025)

Hey all, please find the list of outside testimony submission dates for the House & Senate Appropriations Subcommittees. There is also a list of the emails and to whom you should address such testimony requests. I would be honored to hear how you do, and...if you'd like, I can help you collaborate on your testimony requests. Please find my rules publication as well as my census comment from last year.
Hit me up!
MK

Rules for US-AOC 2025 (Appellate, Bankruptcy, & Evidence): https://www.regulations.gov/comment/USC-RULES-AP-2024-0001-0369

Census Boundary Comments 2024: https://www.regulations.gov/comment/USBC-2024-0012-0004

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DUE DATES 2025
Senate Subcommittee Due Dates 2025 for FY 2026

- May 9, 2025: Senate Legislative Branch; House Commerce, Justice, Science & Related Agencies; House Homeland Security
- May 22, 2025: Senate Agriculture, Rural Development, Food & Drug Administration, & Related Agencies
- May 23, 2025: House Agriculture, Rural Development, Food & Drug Administration, & Related Agencies; House Energy & Water Development
- May 30, 2025: Senate Energy & Water Development; Senate Military Construction, Veterans Affairs, & Related Agencies
- June 13, 2025: Senate Commerce, Justice, Science & Related Agencies; Senate Labor, Health & Human Services
- June 15, 2025: Senate Homeland Security; Senate Interior, Environment & Related Agencies
- June 24, 2025: Senate Defense

- June 27, 2025: Senate State, Foreign Operations & Related Programs
- July 1, 2025: Senate Financial Services & General Government
- 7 days after the respective Departmental budget hearing of interest: Transportation, Housing & Urban Development.

Likely no longer available this year:

1. House Defense
2. House Financial Services & General Government
3. House Military Construction, Veterans Affairs, & Related Agencies
4. House Interior, Environment, & Related Agencies (4 April 2025)
5. House Labor, Health & Human Services, Education & Related Agencies (9 April 2025)
6. Legislative Branch (9 April 2025)
7. National Security, Department of State, & Related Agencies (21 March 2025)
8. Transportation, Housing & Urban Development

EMAIL LIST 2025
Senate Emails (Veterans not available at time of publication)

- agri@appro.senate.gov (Agriculture, Rural Development, Food & Drug Administration, & Related Agencies)
- cjs@appro.senate.gov (Commerce, Justice, Science & Related Agencies)
- def@appro.senate.gov (Defense)
- ew@appro.senate.gov (Energy & Water Development)
- finsec@appro.senate.gov (Financial Services & General Government)
- homelandsec@appro.senate.gov (Homeland Security)
- lhhs@appro.senate.gov (Labor, Health & Human Services, Education, & Related Agencies)
- int@appro.senate.gov (Interior, Environment, & Related Agencies)
- legislativebranch@appro.senate.gov (Legislative Branch)
- thud@appro.senate.gov (Transportation, Housing & Urban Development, & Related Agencies)

- SFOPS@appro.senate.gov (State, Foreign Operations, & Related Programs)

House emails

- ag.approp@mail.house.gov (Agriculture, Rural Development, Food & Drug Administration, & Related Agencies)
- cj.approp@mail.house.gov (Commerce, Justice, Science & Related Agencies)
- in.approp@mail.house.gov (Interior, Environment, & Related Agencies)
- ew.approp@mail.house.gov (Energy & Water Development & Related Agencies)
- hs.approp@mail.house.gov (Homeland Security)

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May 5, 2025, 7:05 p.m.

Document 3.4 Analysis of the UN Security Council's Class of 2024 (January 30, 2024)

New England is well-known historically for having thrived during the Whaling industry's heyday. Though. the local and state curricula may vie in a different direction now, growing up this industry was drilled into our consciousness through things like use of blubber to fuel lamps and analysis of a haggard Captain's hunt of one of the beasts. That heyday was ultimately replaced by the FIRE industries--leading to the rise of the State's insurance industry as the topmost in the nation. And nowadays, some of the central pulls relate to history of the town as a place where a prison was situated and a couple of presidents visited .

This industry may be very important in the international context in the coming days. At least the International Court of Justice's (ICJ) analysis of it in 2014 with the case of Australia v. Japan, New Zealand Intervening. After the Court had established its jurisdiction, it held that Japan's permitting regime was not within those acceptable by the International Convention for the Regulation of Whaling (ICRW). Even though the ICJ found that Japan had complied with its obligations in some instances, Japan was told to revoke authorizations, permits and licenses in the instances where it was not in conformity with its obligations. Australia was protecting the seas from a commercial activity that harmed its interests.

With the first resolution of the year, protecting commercial activity began the conversation for the 2024 Class of the Security Council of the United States (See Supplement 1 for More Details About the Class of 2024 & Its Presidents; and check out my previous post in January 2023 for background on my analysis about UNSC Class of 2023).

UNSC CLASS OF 2024 & THE ICJ

First, contextualizing the current class in relationship to the International Court of Justice (ICJ) emboldens the concerns about activities in the oceans, including illicit activities in the seas.

Even though this year's class consists of a group of nations with sparing interaction with the ICJ...

While Ecuador, Malta, Mozambique & Switzerland (2023-2024) as well as Korea and Slovenia (2024-2025) have never had a judge on that Court, Japan, Algeria, Guyana and Sierra Leone have had seven. Algeria, Guyana, and Sierra Leone (2024-2025) have seen three great judges from their nations serve a total of thirty-six years on the Court, with an overlap between 1994-1997 when they all served. Algeria's Bedjaoui (1982-2001) was the only one among them to have sat at the helm of the Court. Though the other two judges, Shahabuddeen (1988-1997) and Koroma (1994-2012), enjoyed some time on the Court during Bedjaoui's tenure, neither was there during his Vice President (1994-1994).

Switzerland, ever the distinguishable nation throughout the world, as it has taken its first tenure at the UNSC, has only had three cases before the Court—none of which have been concerned directly with environmental matters—and they were discontinued, dismissed, or removed against the one-time neutral nation: Dominica (diplomatic envoy status in host states); United States (banking and property considerations); and Belgium (commercial airlines issues with international compliance with banking and debt-related matters).

The other three non-permanent nations in the UNSC Class of 2024 have one case at that Court and they all have a nexus to protecting, accessing, and lawfully utilizing natural resources (Ecuador, Japan, and Malta). This could get interesting should the General Assembly receive a response to its advisory opinion this year—not likely, but a possibility...

Ecuador's aerial herbicide spraying case against Colombia, although discontinued 17 September 2013, was initiated with a three-fold purpose of (1) acknowledgment for violation of international when allegedly causing human health, property and environmental damage; (2) indemnification of loss and damage arising from death or injury, property harm, human rights and livelihood violations, natural resource depletion, and costs from monitoring public health, human rights and environment; (3) order that Colombia respect sovereign & territorial integrity of Ecuador as well as prevent future harm through prevention of use and dispersal of herbicides.

The last two environmental cases of the nations from the current UNSC Class directly relate to the sea in some fashion.

First, Malta's continental shelf case against the Libyan Arab Jamahiriya provided two judgments—one which asserted Italy's inability to intervene in the case and the other determining equitable principles for drawing the continental shelf a equidistant from the low-water mark on the shores of both nations as across the Mediterranean Sea.

Finally, as discussed above, Japan's *Whaling* case provided a moment in ICJ jurisprudence to scoff at the spectrum of lawfulness concerning seafaring activities of commercial vessels (as opposed, in part, to scientific ones).

WHALING **AS A NEXUS BETWEEN UNSC CLASS OF 2023 & UNSC CLASS OF 2024**

With 1 declaration, six separate opinions, and four dissents, the *Whaling* case was rife with analysis as between many judges from non-permanent nations on the UNSC 2023 & 2024--namely Judges Owada and Cançado Trindade of Japan and Brazil, in particular. Owada, for obvious nationally-centered reasons, found cause to dissent against the judgment's dissipation of a large portion of a commercially viable permitting regime for his home country. Owada bucked against the widespread scope of the court's judgment and felt that it should have narrowed to the purposes of scientific research permitting.

Indeed, bridges arose between the dissenters and the separate opinion writers in the *Whaling* judgment. For example, Owada and Cançado Trindade both were concerned with limiting scope issues: with the former considering the judgment too far reaching and the latter concerned more specifically with Article VIII of the Convention. In a nod to Cançado Trindade's roots at the Inter-American Court, he really highlights the human rights element of the case—the conservation of living species and intergenerational equity. Cançado Trindade's overall quibble—as typical of the very prolific judge—was the need for the Court to further develop its judgment on matters like the object and purpose of the ICRW as well as its "living" status as an instrument, collective guarantee and collective regulation, and uncertainties of scientific research under Japan's regime.

Last year's class included two sets of non-perms, as always. Those who served 2022-2024 (Albania, Brazil, Gabon, Ghana, and the United Arab Emirates) and those who are serving between 2023-2025 (Ecuador, Japan, Malta, Mozambique, and Switzerland).

UNSC CLASS OF 2024 INHERITANCE FROM UNSC CLASS OF 2023: A CURSORY REVIEW OF 2023'S RESOLUTIONS IN THE CONTEXT OF ILLICIT ACTIVITY & THE MIDDLE EAST

The Class of 2023's 53 resolutions pertain to eleven nations (see below), three regions (Africa, the Middle East, & Western Sahara), & two topics (maintenance of international peace and security

Resolutions are the principal mechanism through which the Security Council affectuates its power in a manner that transmits/publicizes its intentions to the United Nations, its Members, and the wider world community. The basis for these resolutions arise from the Charter of the United Nations, which in addition to the formative section the Security Council, calls forth the responsibilities of that international body. For example, Art. 39 ensures that the UNSC may determine threats to peace, breach of peace, or acts of aggression and "shall make recommendations, or decide what measures shall be taken…to maintain or restore international peace and security."

In 2023, the resolutions pertaining to situations in nations related to Afghanistan, Bosnia & Herzegovina, the Central African Republic (CAR), Cyprus, North Korea, the Democratic Republic of the Congo (DRC), Haiti, Iraq, Libya, Mali, and Somalia.

Commercial activity in the *Whaling* case may be instructive for some review of UNSC Class of 2023's resolution. Indeed, distinguishable in large part because that whaling industry was permitted in some instances, commercial activity was a sometime concern for the previous year's class. Some resolutions concerned nations where the UNSC considered illicit commercial activities, though oftentimes in the context of arms trafficking. During both presidencies of the UK in July and China in November, the UNSC condemned CAR's illicit trade, in general, and trafficking in particular (in explosives and wildlife, for example) in the context of border security. Such condemnation applied to illicit transfer at the national level in the DRC, when, during Ecuador's tenure in December, the UNSC encouraged ways to dissipate small arms and light weapons, as well as Libya, when, during Brazil's tenure in October, the UNSC . Also in October, Haiti's issues, in relevant part, related to diversion of such arms.

The Middle East was by far the most robust resolution campaign throughout the tenure of the 2023 UNSC with nine (9) resolutions pertaining to that region of the world. And, while it was surprising that not one resolution pertained to the Ukraine or Russia—probably in part because the ICJ indicated provisional measures in March 2022—the hottest topic of the year arose as a result of an emergency session in the General Assembly. The Palestinian Question and violence in Israel, viciously debated in October, finally led to a resolution concerning Palestine on November 15, 2023 under China's tenure and came up again in December under Ecuador. The question of Israel also arose at the ICJ, with South Africa justifying institution of proceedings against that Middle Eastern nation through the Genocide Convention, in part relying on its typically commercial activity with Brazil, Russia, India, China, and South African (BRICS) to show, rather, a humanitarian concern.

UNSC CLASS OF 2024'S FIRST RESOLUTION (2722): PROTECTION OF COMMERCIAL & MERCANTILE ACTIVITY IN THE RED SEA

In addition to the non-permanent members of the UNSC attending to these resolutions, the U.N. Security Council always has as part of its membership the Five Perms--the phrase that I coined circa 2018 for the five permanent nations who are always on the U.N. Security Council (China, France, the Russian Federation, and the United Kingdom). One of the Five Perms, France, was the first to serve as the president of the U.N. Security Council this year. On July 4, 2023, I wrote about the European nation, which has been involved with Equatorial Guinea in two cases concerning immunities and criminal proceedings as well as return of confiscated property in criminal proceedings since that 2019 analysis.

Like the *Whaling* case analyses by the ICJ Judges, the sole resolution to date under France's current presidency, published on January 10, 2024 (Res. 2722), relates to another set of violations of international law as presented in the Middle Eastern context--illicit activities occurring against merchant and commercial vessels in the Red Sea that were *en route* to Yemen with essential goods impeding on the navigational rights and freedom of such vessels.

After condemning the Houthi attacks in November 2023 and demanding immediate cessation of future attacks like it, the Security Council affirmed the international law supporting navigational rights and freedoms by merchants and commercial vessels. With that affirmation, the UNSC stressingly noted that Member States may defend themselves against such attacks.

Organizations and agencies were given a nod by the French-led UNSC to encourage further protection of the region. The International. Maritime Organization (IMO) was lauded for its work to provide for

safe and secure transit of merchant and commercial vessels and tthe Yemeni Coast Guard and other regional capacity-building measures to encourage coastal and port State enhancement of maritime security may be bolstered through support by Member States.

In addition to enumerating obligations concerning the arms embargo and condemnation of weapons provision, the UNSC urged diplomatic efforts in the region as well as sought a report from the Secretary General.

RESOLUTION 2722: A SUGGESTION FOR NEXT STEPS

In the instance of Resolution 2722, the UNSC Class of 2024 has begun its tenure by stepping in with a forceful measure—likely attempting to forestall the napalm effect of the issues arising in Israel to prevent--perhaps in the manner of the *Whaling* Court and in the manner of my hometown's foreseeing the need for new industry--the complete annihilation of groups of peoples in that region of the world.

I can suggest scores of takeaways from Resolution 2722. I provide only a one key observations. The State Department's Bureau of International Narcotics and Law Enforcement, my alma mater at the U.S. State Department, has indicated that private business interests are not necessarily a focus for their efforts in the Middle East and North Africa. However, if they haven't already, commercially-based protection programs like that which will arise with the Yemeni Coast Guard need to be enriched and the U.S. INL should include organizations like International Attestations, LLC to provide such through bridge building efforts to enrich public-private partnerships

Tuesday, January 30, 2024, 9:00 a.m.; updated 10:10 a.m.; updated 3:48 p.m.; updated January 31, 2024, 5:44 p.m. February 8, 2024, 10:00 p.m.

Document 3.5 U.S. Supreme Court: Wither the Cyber? (July 25, 2023)

My annual authentication outline has included both cyber and advisory at one time throughout my consideration of these specified terms. As such, during the 2020 Term, I considered both terms at varying degrees of immersion. My history with these two terms differs. First, I developed an interest in Cyber Law in 2012, after attending a closed seminar at Georgetown University's Borne Scholars program (my significant other at the time was participating in that program). Also, advisory opinions at the U.S. Supreme Court became important to me as I developed an interest in the International Court of Justice. Ahead of my review of the 2022 term, over the next two weeks I will publish my brief analyses from two years ago.

Beginning with "cyber", there has been only one update since 2020 as the term has become antiquated in legal parlance (though it never really had a strong presence, to begin with). Interestingly, in a First Amendment case during the most recent term, "cyber" did in fact arise in passing. *Counterman v. Colorado*, 600 U.S. __ (2023). In a case where a female performer who was protected with a case against an overly-zealous fan, the accused was tried and found guilty for sending scores of messages that supposedly a reasonable person would have found threatening. This all went forward against his argument that he had a First Amendment defense to free speech. The appellate court agreed with the jury, and the U.S. Supreme Court vacated the judgment because the courts below had not applied the appropriate standard for determining *mens rea* in threatening speech (there seems to be an eradication of that requirement based on recklessness and reasonableness standards that appear to blur the lines between criminal and tort law). In any event, the phrase used in the opinion by Justice Kagan was a citation to one of those Facebook messages written by other fans defending the singer against her over-zealous fan's advances: "Staying in cyber life is going to kill you."

Perhaps evocative of Jodie Foster's overzealous fan turned violent, all parties have been overly cautious. The Court's standard just seems to kick the can down the road for this particular defendant (the Petitioner in this case). He has to undergo an entire new trial, and the result will likely be the same. 4.5 years in prison for liking a public figure too much, when perhaps interventions should have redirected his gaze before they became criminalized. Perhaps Counterman has learned his lesson and he might respectfully shift his music appreciation to that of Miranda Lambert, who responded to the recent selfie-gate debate by advising her audience-members to adhere to the rules of the venue and "Shoot tequila shots instead of selfies."

There were no mentions of cyber during the 2021 term.

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Cyber analysis from the 2020 Term

The Court has directly considered cyber matters in a small selection of cases.[1] There are clearly cases that also consider internet, the world wide web, and other similarly situated terms of art. Due to time constraints, this study focuses solely on “cyber” at the Supreme Court since Chief Justice Roberts has assumed the helm. The Court has included cyber when discussing small and upstart businesses as well as cyber schools and unwanted electronic contact. It has also consider cyberspace as the “most important places (in a spatial sense) for the exchange of views.”[2] The Court has also lamented at the expeditious nature of the medium: “While we now may be coming to the realization that the Cyber Age is a revolution of historic proportions, we cannot appreciate yet its full dimensions and vast potential to alter how we think, express ourselves, and define who we want to be. The forces and dimensions of the Internet are so new, so protean, and so far reaching that courts must be conscious that what they say today might be obsolete tomorrow.”[3]

In response, Justice Alito laments that Justice Kennedy's Opinion is not a sufficient account of the differences between the cyber and physical world when considering tenets of free speech,[4] though they later join together when dissenting about the extent of ownership within the context of cell phone usage during the Cyber Age[5]-—posing the difficulty in drawing a constitutional line concerning privacy interests when also considering such cell phone data in comparison to financial and telephonic records.[6] The Court also analyzed how the Anticybersquatting Consumer Protection Act may protect unregistered trademarks.[7] In the most recent case, the Court implements the Commerce Clause doctrines as applied to the physical presence rule and later argues against a clear and easy applicability of physical presence in the Cyber Age, with such questions being addressed by state courts.[8]

[1] Bilski v. Kappos, 561 US 593 (Stevens, J, concurring in the judgment) (2010); US v. Jones, 565 US 400 (Alito, J., concurring in the judgment) (2012); Dutkevitch v. PA Cyber Charter School, 565 US 1265 (2012); Packingham v. North Carolina, 137 S. Ct. 1730 (Kennedy, J) (2017); Matal v. Tam, 137 S. Ct. 1744 (Alito, J) (2017); Carpenter v. US, 138 S.Ct. 2206 (Roberts, CJ) (Kennedy, J, dissenting)(2018); South Dakota v. Wayfair, Inc., 138 S.Ct. 2080 (Kennedy, J) (2018).
[2] Packingham v. North Carolina, 137 S.Ct. 1730, 1735. (Kennedy, J) (2017).
[3] Packingham v. North Carolina, 137 S.Ct. 1730, 1736 (Kennedy, J) (2017).
[4] Packingham v. North Carolina, 137 S.Ct. 1730, 1743-1744 (Alito, J, concurring in the judgment) (2017).
[5] Carpenter v. US, 138 S. Ct. 2206 (Kennedy, J, dissenting) (2018).
[6] Carpenter v. US, 138 S. Ct. 2206 (Kennedy, J, dissenting) (2018).
[7] Matal v. Tam, 137 S. Ct. 1744, 1752-1753 (Alito, J) (2017).
[8] South Dakota v. Wayfair, Inc., 138 S. Ct. 2080, 2097-2098 (Kennedy, J) (2018).

Tuesday, July 25, 2023, 9:00 a.m.

Document 3.6 United Nations & Global Counter-Terrorism Strategy (June 13, 2023)

On the crisp Tuesday after Memorial Day, I ventured into New York City to attend events at the United Nations. Once at the campus, I received a grounds pass from the appropriate office—one that expires on December 31, 2023. I attended two events: the Global Counter-Terrorism Strategy revision session (Strategy session) and the opening activities for the 35th Meeting of the Chairpersons of Human Rights Treaty Bodies (Chairpersons Meeting). Last week I discussed the Chairpersons Meeting, and today I will discuss my observations of the Strategy session.

When visiting the United Nations, I stayed for an hour of the Strategy session. The Global Counter-Terrorism Strategy was adopted through consensus in 2006 and is embodied in A/Res/60/288, establishing national, regional, and international efforts to fight terrorism. Every two years, the United Nations meets to discuss revisions for this strategy—basically an international group editing session moderating by a chairperson. Attending to the second revision of the eighth such session's document when I was in attendance, the Strategy session entailed going through part by part of the strategy and proposing revisions through national representatives. So, for example, the United States sought a rationale for adding paragraph 9-bis (soon to be released with or without the revision). During that meeting, I noted that a great deal of participation came from the United Kingdom (UK), United States of America (USA), the Russian Federation (Russia), the European Union (EU), and States from the Organization of Islamic Cooperation (OIC).

Before getting into specific paragraphs, several governments voiced their overall concerns with the strategy's second revision. Saudi Arabia's representative spoke on behalf of the OIC, with the following slogan: the collective voice of the Muslim world. They were concerned about combating homophobia, criteria for selecting specific inputs, and whether equal weight to groups and delegations. The USA followed when its delegate expressed issues with PP20 (desecration of religious texts) and OP86 (rule of law, human rights and gender development; naming the Human Rights and Gender Section of the UN Office of Counter-Terrorism). Next up was the EU's delegate, who was averse to the deletion of consensus language as well as civil society protections implementation and to the new topical language that do not appear in the Secretary General reports, previous strategy versions, and more. He, too, was concerned with deletions to OP86. The UK's representative spoke after the EU, echoing concerns about the deletion of consensus language—urging its retention. The Russian delegate spoke last during the open comment period on revision 2. He felt that there was lack of clarity for the selective approaches to the revision, particularly as to why some proposals were taken and others omitted. He felt there were still many controversial paragraphs in the proposal, and he expressed a concern about paragraphs that were removed. He affirmed that he was open to further discussion and ready to work constructively with all delegations.

After the general comments, the moderator took them through a paragraph-by-paragraph review of the document. Frankly, I had a great deal of fun observing this revision session, and had I not other obligations with the human rights world, I would have stayed the entire day! However, I was only able to stay through their review of PP24. During that time, while many paragraphs were skipped extensive commentary was provided for eight (8) of those paragraphs (PP 5 bis, 9 bis, 10, 16, 18, 21, 22, and 24). I have provided a copy of the zero-draft paragraphs in the appendix.

Russia, Saudi Arabia, Egypt, the EU, and Nigeria debated the language of PP 5 bis. Russia called for naming of specific terrorist organizations and there was a discussion between Nigeria, Egypt, and the EU concerning language concerning regional issues pertaining to Africa.

While the U.S. was the only nation to comment about the addition of 9 bis, they were joined by Russia and Mexico in debating the contents of PP10—focused on underlying conditions of nations that could foster terrorism. Russia wished for more consideration of violent extremism and racial processes, while the U.S. wished to hear more rationale for opening up to more edits of this paragraph after they had already reached a careful consensus. Mexico was flexible but wished to see the previously agreed language, while also suggested putting "preventing and" before "countering" in that paragraph.

Saudi Arabia, Nicaragua, the EU, the USA, Australia, Morocco, Switzerland, the UK, Turkmenistan, and Uzbekistan were the ten (10) entities that commented on PP16 (delivery of integrated and coordinated assistance at the field level). Field presences and resident coordinators were the common topics of debate among these ten governments. Saudi Arabia and Nicaragua both countered inclusion of resident coordinators. As for field presences recommendation by Turkmenistan, the US, Switzerland, the EU, and the UK questioned inclusion of such a topic in that paragraph.

After Costa Rica and Mexico expressed their disappointment at the deletion of PP18bis, Russia and US spared over PP21 (importance of the role of the media, civil society, religious actors, the business community and educational institutions). Russia was concerned with omission of digital technologies used by terrorist and hate groups.

Saudi Arabia, Switzerland, Israel, Syria, and Iraq debated the use of "incitement" of children to terrorism as an important addition to PP22 (systematic recruitment and use of children to perpetrate terrorist attacks). The OIC, to include Saudi Arabia and Syria and Iraq, as well as Switzerland pushed back against inclusion of the term, with Switzerland's delegate requesting that they narrow the margin of the term. Israel's representative justified her nation's suggestion to include the word because of the increased instances of this activity.

Finally, Saudi Arabia, Russia, and the EU asserted their viewpoints about including "in particular women-led civil society organizations" as part of PP24 (criminal justice systems standards). The OIC, through Saudi Arabia, and Russia did not wish to include this phrase, with the latter's delegate expressing concern about particularizing the civil society organizations as "women-led" and wishing for a more whole of government and whole of society approach. The EU's representative asserted his supranational government's support for the phrase. Nine nations simple voiced their support of the EU's assertions (US, Switzerland, Japan, UK, Costa Rica, Norway, Mexico, Australia, and Colombia).

Appendix 1. Highlighted Paragraphs from the Zero Draft

PP10 *Reaffirming* the primary responsibility of Member States and their respective national institutions in countering terrorism, concerned that terrorists continue to endeavour to exploit underlying conditions in some countries, such as limited reach of Governments and lack of capacity to deliver essential services by law enforcement and security institutions, and emphasizing that enhancing the capabilities and capacities of State institutions, where applicable and upon request, to prevent and counter terrorism is a pivotal component for successful efforts against terrorism,

PP16 *Recognizing* the important role of the United Nations in providing integrated and coordinated assistance at the field level, and noting in this regard the efforts of the Office of Counter-Terrorism in increasing its field presence, including at the regional level through programme offices in Hungary, Kenya, Morocco, Qatar and Spain, and the Behavioural Insights to Counter-Terrorism Hub and the Parliamentary Engagement Hub in Doha to facilitate the delivery of programmes closer to beneficiaries, enhance their impact and cost-effectiveness, and strengthen cooperation with national and local counter-terrorism actors, as well as regional bodies and other providers and recipients of assistance, and reminding the Office of Counter-Terrorism field presence to work in close coordination with the wider United Nations presence at the national or regional level,

PP21 *Stressing* the importance of the role of the media, civil society, religious actors, the business community and educational institutions in those efforts to enhance dialogue and broaden understanding, in promoting pluralism, tolerance and coexistence, and in fostering an environment which is not conducive to incitement of terrorism, as well as in countering terrorist narratives,

PP22 *Strongly condemning* the systematic recruitment and use of children to perpetrate terrorist attacks, as well as the violations and abuses committed by terrorist groups against children in all circumstances, including killing and maiming, abduction and rape and other forms of sexual violence, noting that such violations and abuses may amount to war crimes or crimes against humanity, and urging Member States to comply with applicable obligations under the Convention on the Rights of the Child,3 emphasizing the importance of accountability for such abuses and violations,

PP24 *Recognizing* the important contribution to the counter-terrorism efforts of Member States and Global Counter-Terrorism Coordination Compact entities derived from dialogue with and, as appropriate, support for and partnership with civil society actors committed to the principles and objectives of the Charter of the United Nations, as part of a whole-of-society approach, similarly recognizing that civil society actors should be further enabled to contribute to the goals of the Strategy, and in this regard noting the Secretary-General's guidance to the United Nations system,4

4 United Nations Guidance Note on the Protection and Promotion of Civic Space.

Tuesday, June 13, 2023, 9:00 a.m.

Document 3.7 Obligations in Advisory Opinions at the ICJ (April 25, 2023) & Consequences in ICJ Advisory Opinions: Questions & Holdings (May 16, 2023)

Obligations in Advisory Opinions at the ICJ (April 25, 2023)

On March 29, 2023, the General Assembly sought another advisory opinion from the International Court of Justice (ICJ). This is the first dedicated solely to environmental issues. The first advisory opinion at the International Court of Justice was in 1948, and it related to conditions of membership at the United Nations. Advisory opinions were also active during the tenure of the ICJ's predecessor, the Permanent Court of International Justice (PCIJ). That Court entertained eighteen advisory opinions, while the ICJ has considered twenty-seven, with an additional two pending.

The request from the General Assembly seeks answers to a couple first impression topics: climate change, anthropogenic emissions of greenhouse cases, and impact on present and future generations. This climate opinion is not the first time the environment was directly considered for an advisory opinion's questions and/or operative paragraphs. For example, the *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* considered such questions. Unfortunately, the extent that obligations of international law pertain to health and environmental effects of nuclear weapons in war or armed conflict was never considered fully by the Court. The ICJ declined to consider that WHO generated opinion.

Another facet of the newest advisory opinion to be presented at the Court is the citation to ten types of treaties and international obligations at the beginning of the query. "Human Rights" are heavily represented among those documents. Obviously the instruments and customary international law that relate to this subject matter are: (1) the Charter of the United Nations; (2) the International Covenant on Civil and Political Rights; (3) the International Covenant on Economic, Social and Cultural Rights; (4) the rights recognized in the Universal Declaration of Human Rights; (5) the principle of prevention of significant harm to the environment; and (6) the duty to protect and preserve the marine environment. But there are also arguments that the other four documents are also human rights instruments: (1) the United Nations Framework Convention on Climate Change; (2) the Paris Agreement; (3) the United Nations Convention on the Law of the Sea, and (4) the duty of due diligence.

"Human Rights" have been directly addressed in the questions presented and/or operative paragraphs of two (2) other cases (The forthcoming Jerusalem & Palestine Opinion; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights* (1999)). Rights in general were also discussed in the PCIJ's *Greco-Bulgarian Communities*, in which the opinion considered property rights of dissolving populations (1930).

Thirteen of the advisory opinions before the ICJ and the PCIJ have directly consider obligations in their questions presented and/or operative paragraphs (*Chagos Archipelago*; *Palestinian Wall*; *Immunity of Special Rapporteur*; *Nuclear Weapons in Armed Conflict*; *Nuclear Weapons*; *UN Headquarters Agreement*; *WHO and Egypt Agreement*; *Presence of South Africa in Namibia*; *South West Africa*; *Reparation for UN Injuries*; *European Commission of Danube Jurisdiction*; *German Settlers in Poland*; and *Status of Eastern Carelia*).

Obligations have arisen as the responsibility of States as a whole or individually, national governments, national courts, and treaty signatories. Further, obligations have been national as well as international. They have also been mutual or exclusive as well as based on legality or illegality. Actions of obligations can be to terminate, recognize (or not to recognize), enter into, consult, negotiate, give (notice), withdraw, transmit, place under (trusteeship system), ensure, breach, and contemplate.

The PCIJ cases established the modern foundation of obligations as considered by the ICJ. *Status of Eastern Carelia* established the obligation of one state to another, *German Settlers in Poland* set up international obligations contemplated by a treaty, and *European Commission of Danube Jurisdiction* ensured freedom of navigation and equal treatment of all flags.

South West Africa considered international and legal obligations, particularly with regard to transmittal of petitions for inhabitants as well as placement under the UN's Trusteeship system. *Presence of South Africa in Nambia* set the foundation for an obligation to recognize the illegality of one state's presence in another and, by extension, the duty to withdraw such presence.

Contractual obligations have been present at the ICJ as well. *UN Headquarters Agreement*required arbitration, *WHO and Egypt Agreement* established the mutual obligation to consult, negotiate and give notice, and *Reparation for UN Injuries* addressed breach of obligations due to the United Nations.

Nuclear Weapons in Armed Conflict attempted to address health and environmental concerns, while *Nuclear Weapons* instituted disarmament requirements.

Immunity of Special Rapporteur contemplated national responsibilities for international obligations. Malaysia and its Government were under obligation to inform its courts of the Secretary General's findings as well as the ICJ advisory opinion. Further, the national courts were mandated to deal with the question of immunity from legal process. Finally, overall the nation was to give effect to international immunity obligations.

Palestinian Wall addressed the need to terminate breaches of international law, cease construction, make reparations and to ensure compliance by Israel. Interestingly in the *Palestinian Wall* case, the Court also talked about negative obligations—the obligation not to recognize the illegal situation.

Finally, *Chagos Archipelago* implemented obligations arising from decolonization.

Other elements considered within the climate change questions posed to the ICJ concern States, consequences, acts, omissions, harm, small-islands, geography, vulnerabilities, adverse effects, affected by, individual, and people. As the world prepares for the results of the climate change advisory opinion, I will continue to consider these elements of the questions. The ICJ has set the deadline for written statements for 20 October 2023 and for written comments on those statements for 22 January 2024.

Annex 1. List of Advisory Opinions at the ICJ

Pending ICJ Advisory Opinions

1. Obligations of States in respect of climate change
2. Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem.

ICJ Advisory Opinions (reverse order)

1. Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965 (2019)
2. Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development (2012)
3. Accordance with international law of the unilateral declaration of independence in respect of Kosovo (2010)
4. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (2004)
5. Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights (1999)
6. Legality of the Use by a State of Nuclear Weapons in Armed Conflict (1996)
7. Legality of the Threat or Use of Nuclear Weapons (1996)
8. Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations (1989)
9. Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947 (1988)
10. Application for Review of Judgment No. 333 of the United Nations Administrative Tribunal (1987)
11. Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal (1982)
12. Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt (1980)
13. Western Sahara (1975)
14. Application for Review of Judgment No. 158 of the United Nations Administrative Tribunal (1973)
15. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) (1971)
16. Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)

17. Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization (1960)
18. Admissibility of Hearings of Petitioners by the Committee on South West Africa (1956)
19. Judgments of the Administrative Tribunal of the ILO upon Complaints Made against UNESCO (1956)
20. Voting Procedure on Questions relating to Reports and Petitions concerning Territory of South West Africa (1955)
21. Effect of Awards of Compensation Made by the United Nations Administrative Tribunal (1954)
22. Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (1951)
23. International Status of South West Africa (1950)
24. Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (1950)
25. Competence of the General Assembly for the Admission of a State to the United Nations (1950)
26. Reparation for Injuries Suffered in the Service of the United Nations (1949)
27. Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter) (1948)

Annex 2. List of Advisory Opinions at the PCIJ

1. B18 – Free City of Danzig and ILO (1930)
2. B17 Greco-Bulgarian "Communities" (1930)
3. B16 Interpretation of the Greco-Turkish Agreement of 1 December 1926 (Final Protocol, Article IV) (1928)
4. B15 Jurisdiction of the Courts of Danzig (1928)
5. B14 Jurisdiction of the European Commission of the Danube (1927)
6. B13 Competence of the ILO to Regulate Incidentally the Personal Work of the Employer (1926)
7. B12 Interpretation of Article 3, Paragraph 2, of the Treaty of Lausanne (1925)
8. B11 Polish Postal Service in Danzig (1925)
9. B10 Exchange of Greek and Turkish Populations (1925)
10. B09 Monastery of Saint-Naoum (1924)
11. B08 Jaworzina (1923)

12. B07 Acquisition of Polish Nationality (1923)
13. B06 German Settlers in Poland (1923)
14. B05 Status of Eastern Carelia (1923)
15. B04 Nationality Decrees Issued in Tunis and Morocco (1923)
16. B03 Competence of the ILO to Examine Proposal for the Organization and Development of the Methods of Agricultural Production
17. B02 Competence of the ILO in regard to International Regulation of the Conditions of the Labour of Persons Employed in Agriculture (1922)
18. B01 Designation of the Workers' Delegate for the Netherlands at the Third Session of the International Labour Conference (1922)

Tuesday, April 25, 2023, 9:00 a.m.

Consequences in ICJ Advisory Opinions: Questions & Holdings (May 16, 2023)

On April 25, 2023, I published a blogpost about the most recent request for an advisory opinion about the obligations of states concerning climate change at the International Court of Justice (ICJ). In that post, I discussed one of the central tenets of the climate change question posed to the ICJ. I also highlighted the direct mention of human rights in the query. At the end of the entry, I listed other elements posed to the ICJ: States, consequences, acts, omissions, harm, small-islands, geography, vulnerabilities, adverse effects, affected by, individual, and people.

Today, I'll briefly sum-up the questions presented and the operative paragraphs of the principal advisory opinions addressing consequences at the ICJ because the *Obligations of States in respect of climate change* (*Climate Change*) request posits: "What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to: (i) States...[and] (ii) Peoples and individuals...?"

There have been four (4) advisory opinions that have centrally-addressed consequences.

The advisory opinions that have already been decided are the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276* (1970) (*South West Africa*), *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004) (*Palestinian Wall*), and *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*(2019) (*Chagos Archipelago*). Most recently, and still pending, is the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (*Occupied Palestinian Territory*).

Those questions presented are listed verbatim in chronological order:
1. What are the **legal consequences** for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (South West Africa)?

2. What are the **legal consequences** arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of thie Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions (Palestinian Wall)?

3. What are the **consequences under international law**, including obligations reflected in the above-mentioned resolutions, arising from the continued administration by the United Kingdom of Great Britain and Northern Ireland of the Chagos Archipelago, including with respect to the inability of Mauritius to implement a programme for the resettlement on the Chagos Archipelago of its nationals, in particular those of Chagossian origin (Chagos Archipelago)?

4. (a) What are the **legal consequences** arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures (Occupied Palestinian Territory)?

5. (b) How do the policies and practices of Israel referred to in paragraph 18(a) above affect the legal status of the occupation, and what are the **legal consequences** that arise for all States and the United Nations from this status (Occupied Palestinian Territory)?

The term "consequences" also appeared once in a question presented in the Permanent Court of International Justice (PCIJ), the predecessor of the ICJ. In Greco-Bulgarian "Communities" (1930) (Greco-Bulgarian Communities), the Greek government asked:

"Do the communities possess the characteristic of being connected as minorities and racial groups with the country in which the majority of the population is of the same race ? What are eventually the **consequences**, as regards the allocation of their property, where their members, as contemplated by Article 1O of the Convention, are dispersed or absent (in the legal sense of the term) ?"

Arguably, the PCIJ advisory opinion, Jurisdiction of the Courts of Danzig (1928), predates the first express mention of consequences by considering the results of certain activities (namely regarding the illegality of the the High Commissioner's decision in relationship to requests made by the Danzig government).

Consequences have increasingly been expressly considered within the questions presented to the ICJ for an advisory opinion, in that they have been part of the most recent three queries (Chagos Archipelago, Occupied Palestinian Territory, and Climate Change). And they've been the topic of four the last six advisory opinions questions. All five of the advisory opinions addressing consequences sprang up since 1970, with the Court having accepted seventeen queries seeking advisory opinions since that time. There have been a total of 29 requests for advisory opinions, which means that nearly one-sixth of all advisory opinions at the ICJ have considered consequences.

In the three advisory opinions that have hencefar been published, the relevant operative paragraphs are as follows:

1. ***Chagos Archipelago*** (#3-5):
Is of the opinion that, having regard to international law, the process of decolonization of Mauritius was not lawfully completed when that country acceded to independence in 1968, following the separation of the Chagos Archipelago.
Is of the opinion that the United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible;
Is of the opinion that all Member States are under an obligation to co-operate with the United Nations in order to complete the decolonization of Mauritius.

2. ***Palestinian Wall*** (3):
A. The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, are contrary to international law ;
B. Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, in accordance with paragraph 151 of this Opinion;
C. Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem;
D. All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assis- tance in maintaining the situation created by such construction; al1 States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation. while respecting the United Nations Charter and inter- national law, to ensure compliance by Israel with international humani- tarian law as embodied in that Convention;

E. The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the present Advisory Opinion.

3. ***South West Africa*** (1-3):
(1) that, the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from Namibia immediately and thus put an end to its occupation of the Territory ;
(2) that States Members of the United Nations are under obligation to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia, and to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the legality of, or lending support or assistance to, such presence and administration; and
(3) that it is incumbent upon States which are not Members of the United Nations to give assistance, within the scope of subparagraph (2) above, in the action which has been taken by the United Nations with regard to Namibia.

4. **Greco-Bulgarian Communities** (111.2)
(2) Communities, within the meaning of the Convention, are of a character exclusively minority and racial. The State to which they are racially akin does not from this circumstance derive any right to the movable property or to the proceeds of the liquidation of the immovable property of a dissolved community whose members are dispersed or absent.

The dissents from American judges in the two most recent ICJ opinions concerned with consequences are notable. First, Judge Donoghue (USA) was the lone dissenter in all three relevant *Chagos Archipelago* holdings. She felt that the bilateral treaties were sufficient for completion of the process of decolonization. Perhaps foreseeing what her former slave-holding nation may endure for such an unlimited "statute of limitations", she contested that holdings insisting that the modern United Kingdom should suffer the consequences from conduct so remotely in the past (Donoghue dissent, para. 18). She felt the response of the other ICJ Judges was not limited enough (para. 22).

Next, Judge Buergenthal also was almost entirely the lone dissenter in the *Palestinian Wall* opinion, only being joined by Judge Kooijmans (The Netherlands) against the holding that all states were obligated not to recognize the illegal situation and they were not permitted to render aid or assistance in such construction. Judge Buergenthal asserted his dissent because in his view, "the absence in this case of the requisite information and evidence vitiates the Court's findings on the merits." He finished by stating that the Court was under no obligation to make findings in the case.

The earliest ICJ opinion showed a more divided Court concerning its holdings (*South West Africa*), with eight separate opinions and one declaration.

The only PICJ opinion is not cited, but the two most recent ICJ opinions both cite to the Greco-Turkish Agreement (1928) to stand for the proposition of the inadequately formulated question presented. In fact, the former has almost never been cited, only discoverable in the Written Comments of the Government of the Republic of Costa Rica in *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights* for a different assertion in the opinion; namely, that, as later codified in the Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

Indeed, when the Court has been asked to consider consequences, it tends to give fairly detailed instructions about the path forward at the national and international levels.

List of Cross-References
Blogpost on ICJ Advisory Opinions Questions Presented: https://internationalattestations.com/blog/f/icj-advisory-opinions-questions-presented
Information about the Climate Change request: https://icj-cij.org/case/187

Tuesday, May 16, 2023, 9:00 a.m.

Document 3.8 Comment on Supreme Court Rules (February 7, 2023)

The U.S. Supreme Court published new rules in December. They did so months after opening up a comment period on the proposed changes. The period was about a month and done without the benefits of Regulations.gov's electronic filing system for notice and comment periods.

On April 11 and April 19, 2022, I published two successive blog posts concerning the 2022 proposed U.S. Supreme Court Rule changes published by the U.S. Supreme Court's Clerk, Scott S. Harris. Those posts were entitled: U.S. Supreme Court Rule Changes 2022: Colors of Amicus Curiae and U.S. Supreme Court Rules: Favorability & Erasing Consent. The first post discussed the problems with potentially increasing amicus curiae briefs. The second post details the history of favorability as described in the rules concerning amicus curiae. Favorability is shorthand for how the parties shall give consent for participation in the case.

The comments for rule changes were due around the time of the second post. I expeditiously researched the historic rules and provided comments on favorability and the court's notice and comment methodology. After filing my comments, I moved on to many other projects--Supreme Court and holidays; the International Court of Justice and judges ad hoc; the Bureau of International Narcotics and Law Enforcement, and so on.

In mid-December 2022, I received a letter from the Clerk of Court, Mr. Harris himself! He thanked me for my thoughtful response to the Court's request for comments on proposed revisions to the Rules. He also wrote: "Your comments, and those of many others, were quite helpful in finalizing the amendments that were announced on December 5, 2022. We are grateful for your assistance."

In the spirit of my goal of moving comments online, I have decided to print the suggestions I made to the Court below.

Feel free to email me yours if you were among one of the commenters! Or better still, call me to write one for you...

SPECIFIED COMMENTS BY MELISSA A. KOTULSKI FOR PROPOSED CHANGES TO THE U.S. SUPREME COURT'S RULES (APRIL 2022)

Rule 37 Removal of Consent of the Parties & Using Regulations.gov

Question Presented 1: Whether favorability language may be beneficially added to the sections of Rule 37 that are directly impacted by erasure of the requirement that a party seeking to file an *amicus curiae* brief obtain consent of the parties or file a motion for leave?

Short Answer 1: The Court would likely benefit from adding favorability language to 37(2) and 37(3).

Question Presented 2: Whether the Court would benefit from use of Regulations.gov for posting about a notice and comment period?

Short Answer 2: It depends on the Court's discretion.

I. Language Concerning the Court's Favorability Would Likely Clarify the New Rule

A. *Amicus Curiae* Briefs Will Now Be at the Sole Discretion of the Court

The Court has published for public comment a proposed change of Rule 37's consent-of-parties provisions. Beginning with the inclusion of the *amicus curiae* in the Court's 1939 publication, this provision of the rule has a long-standing tenure with the history of this type of participation in a Supreme Court case. Favorability has stood as a part of the *amicus curiae* rule since 1954, but not as part of the provisions pertaining to consent. The Court might benefit from including a provision about its standard of favorability in the *amicus curiae* rule's paragraph 2 and 3.

B. Consent of the Parties Has Been Part of the *Amicus Curiae* Rules Since Their Inception

While there has been evidence of *amicus curiae* briefs provided to the Court before 1939, no provision existed in the Court's publication of the rules before that year. Between 1936 and 1939, under the tenure of Chief Justice Charles Evan Hughes (1930-1941), a new provision for the Rules of the Supreme Court of the United States was implemented. Adopted February 13, 1939, and effective February 27, 1939, paragraph 9 of rule 27 was inserted into the text as follows:

> A brief of an *amicus curiae* may be filed when accompanied by written **consent of all parties** to the case, except that **consent need not be had.** when the brief is presented by the United States or an officer or agency thereof and sponsored by the Solicitor General, or by a State or a political subdivision thereof. Such brief must bear the name of a member of the bar of this court. (bold used to highlight the relevant provision)

That means from its inception the parties were given the authority to offer (or withhold) approval for permitting friend of the court briefs and that authority was never required for the State parties (Solicitor General or State or political subdivision thereof).

Between the rules of 1939 and the rules of 1954, another substantial change arose with the implementation of a table of contents and a reshuffling of the rules so that the *amicus curiae*briefs were situated in their own rule at Rule 42 under "Part VIII. Practice".[1] Another shift arose between 1970 and 1980, when the rule was changed to #36.[2] The final major structural change happened between 1980 and 1989, when the rule was moved to #37 and the parts of the greater body of rules were renumbered and renamed situating the *amicus curiae* rule in "VII. Practice and Procedure".[3] That means the structure of this rule in relation to the other rules of Court has remained relatively stable since 1989—for more than 33 years—which means the rule's placement remained untouched during the Court's most recent revision in 2017.[4]

The Court implemented the imperative gateway measure of consent of all parties for an *amicus curiae* to enter an argument, except in the case of the Solicitor General, at the time of the first formalized *amicus curiae* rule. One posits why consent was built into the then two-sentence rule—which has since been expanded into its own rule and today stands at six extensive paragraphs. Looking at the context of the period, the adversarial internal strife of the 1930s led to a 1940s consolidation of national efforts on the international stage. And Chief Justice Hughes maintained a relatively global outlook since his days as Secretary of State (1921-1925) ushered in the Permanent Court of International Justice.

Between 1939-1954, the Court developed the consent concept even further. *Amicus curiae* briefs became the subject of an entire rule, expanding from one paragraph into five. The Warren Court's rule change's expansion to five paragraphs still centered the rule on the consent of the parties. The five paragraphs added a great deal of detail to the consent portion of the rule by distinguishing between season of a case (before petition, before merits); providing a procedure for when consent was not given; and expanding the Solicitor General exception to consent to include agencies, States, Territories, Commonwealths or the political subdivisions of such.[5]

1954 marked the year when the provision on favorability was inserted in paragraph one of then-rule 42: "…a motion for leave to file when consent is refused…[is] not favored." While that standard of favorability evolved into the current-rule 37's paragraph 1:

> An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not service this purpose burdens the Court, and its filing is not favored. (2017 Rules)

Like the favorability development, the definition of consent continued to be enhance as rule revisions moved on. The 1980 rule changes added that the consent of the parties needed to be in writing (36[1]; 36[2]). Further, the drafters of the rules narrowed the limitations when filing of a brief to a case before the Court for oral argument (36[3]), this rule applied more broadly before the 1980 revisions.

The Rehnquist Court went through two major substantive revisions. Limitations on the numbers of *amicus curiae*briefs submitted in a case emerged in 1989 when the Court indicated that an *amicus curiae* brief can help bring a "relevant matter to the attention of the Court" that had not "already been brought to its attention by the parties" and anything that "does not serve this purpose simply burdens...the Court and its filing is not favored." (Rule 37(1)).[6] This favorability threshold provided the Court with the foundation for elimination of briefs addressing irrelevant and redundant matters. Further, such a threshold gave the Court a test for acceptance or denial of approval.

Next, the 1995 rules substantially expanded two of the six paragraphs (para. 2 and para. 3) by adding two sections to each paragraph (a and b).[7] This expansion provided *amicus curiae* with two primary pathways to submitting briefs: 1. via consent of the Court; 2. via consent of the parties. The latter pathway is what the 2022 rules propose to eliminate.

While the next revisions to the rule included the use of electronic transmission of materials to the Court in 2007 (Rule 37(3)(a)) and the inclusion of a sentence only permitting attorneys at bar to submit amicus curiae briefs in 2010 (Rule 37(1)),[8] 2022 will be the first substantive development concerning consent and *amicus curiae* briefs since 1995. This substantial change to *amicus curiae* briefs will mark the first substantive revision to this longstanding, historical provision by Chief Justice Roberts. He and his clerk, Scott Harris, have been serving in these positions long enough to reasonably foresee this revision to be his last to the amicus curiae briefs. Still, problems may arise and there may be a need for further changes in future rule revisions.

C. The Court's Jurisprudence Supports Inclusion of a Provision on Favorability

The Court has traditionally asserted that *amicus curiae* briefs not consented to by the parties would likely not be favored. By erasing these provisions, along with the language on favorability in para. 2 & para. 3, the Court will likely benefit from clarifying its standard of review of *amicus curiae* briefs. Justice Kagan's recent *Badgerow v. Walters* (2022) opinion indicates support for adding this language, while Justice Breyer's *Badgerow v. Walters* (2022) dissent supports the favorability provision simply arising in §1 of Rule 37. The former is the current standard proscribed to by almost the entire Court when considering "*et seq*," while the latter is the solitary dissent of a retiring, albeit longstanding, member of the Court.

As such, the standard of favorability will not be implied by its inclusion in para. 1 of Rule 37. And the practitioners will benefit from the Court's clarification with a phrase or sentence in para. 2 and para. 3 indicating the standard for favorability at the two distinctive phases of the case. Such a clearly stated standard will likely limit the *amicus curiae*to those that are "of considerable help" to the matter.

D. Suggestion for Insertion of Favorability Standard

The standard for favorability may be inserted as a phrase within the first sentence of or as a sentence at the end of revised paragraphs 2 and 3 of Rule 37. The details of the standard are, of course, at the discretion of the Court.

II. **The Court Might Benefit from Posting on Regulations.gov**

Like many federal agencies and courts, the U.S. Supreme Court is gracious to permit a comment period on the rule changes. Many agencies and courts use Regulations.gov, a portal designed to seek, collect, and post comments on proposed rule changes at various stages of rule-making. In fact, the U.S. Courts have been seeking regular comments on their rule changes since 2013 for the preliminary drafts of the (1) Federal Rules of Civil Procedure, the (2) Federal Rules of Bankruptcy, and (3) Federal Rules of Criminal Procedure; since 2014 the (4) Federal Rules of Appellate Procedure; and since 2015 the (5) Federal Rules of Evidence.

Half of the 32 comment periods sought bпy the U.S. Courts have yielded less than 13 comments per set of rule changes. While the other half have led to copious comments, only the top six have borne more than 100 comments. In sum, about 81% of comments periods produce less than 100 comments. And except for two specialized comment periods by the U.S. Courts that lasted one and four months respectively, almost all comment periods have lasted about 6 months from the time notice of the rule change (give or take a day).

Perhaps the U.S. Supreme Court might consider submitting the next comment period via Regulations.gov. Not all comments are published for the public to view. Though if the Court chooses to publish the comments, then like the Court's other materials, they can be discoverable and researchable for the public to use—likely leading to more refined responses to future comments on rules. Finally, the the Court can still offer a 1-month comment period, and it can reduce paperwork by accepting electronic files for some, if not all, comments.

While Regulations.gov is a relatively new mechanism for accepting comments, the Court has now undergone two rule changes without using this useful device for notice and comment periods. Perhaps the Court may consider using it for the next revision of the rules.

[1] Revised Rules of the Supreme Court of the United States, Adopted April 12, 1954, Effective July 1, 1954. The other parts of that table of contents were: Part I. The Court; Part II. Attorneys and Counsellors; Part III. Original Jurisdiction; Part IV. Jurisdiction on Appeal; Part V. Jurisdiction on Writ of Certiorari; Part VI. Jurisdiction of Certified Questions; Part VII. Jurisdiction to Issue Extraordinary Writs; Part IX. Special Proceedings; Part X. Disposition of Causes; Part XI. Abrogation of Prior Rules; & and Appendix with Forms.

[2] Rules of the Supreme Court of the United States, Adopted April 14, 1980, Effective June 30, 1980, including revisions of November 21, 1980.
[3] Rules of the Supreme Court of the United States, Adopted December 5, 1989, Effective January 1, 1990. The other parts of the rules were: Part I. The Court; Part II. Attorneys and Counselors; Part III. Jurisdiction on Writ of Certiorari; Part IV. Other Jurisdiction; Part V. Motions and Applications; Part VI. Briefs on the Merits and Oral Argument; Part VIII. Disposition of Cases; Part IX. Application of Terms and Effective Date
[4] Rules of the Supreme Court of the United States, Adopted September 27, 2017, Effective November 13, 2017.
[5] The fifth paragraph provides for the policy of submitting brief, motions, and responses (Rule 33, 35, 39, 40).
[6] Rules of the Supreme Court of the United States, Adopted December 5, 1989, Effective January 1, 1990.
[7] Rules of the Supreme Court of the United States, Adopted July 26, 1995, Effective October 2, 1995.
[8] Rules of the Supreme Court of the United States, Adopted July 17, 2007, Effective October 1, 2007; Rules of the Supreme Court of the United States, Adopted January 12, 2010, Effective February 16, 2010.

Tuesday, February 7, 2023, 9:00 a.m.

Document 3.9 Nationality & Hoops at Court (May 17, 2022)

Springfield, Massachusetts has a great sight to the west of I-91 as one enters the city: A building shaped like a basketball commemorates the past, present, and future facets of the sport. Although some manifestation of the Naismith Memorial Basketball Hall of Fame has been open since 1959, the sport has been around since 1891. What heights the players have attained since that time--most fans well know that dunk from the foul line that set the stage for the soaring/scoring theatrics of the current generation. And the bar at the national level, keeps on araisin'!

Basketball has been a sport at the Olympics since 1936 and the Court of Arbitration for Sport (CAS) has seen more than 30 cases. At that tribunal, the vast majority of cases (19) have been dismissed. While jurisdiction was affirmed in one (1) case, four (4) instances arise when jurisdiction was denied. Finally, the Court partially upheld all but two of the eight (8) cases that have been upheld. In addition to scores of individuals (even Allen Iverson has made an appearance in this Court), parties have included clubs and international organizations, such as: Fédération Internationale de Basketball (8), FIBA Europe (2), International Paralympic Committee (1), Nederlandse Basketball (Bond) (1), the Russian Basketball Federation (1), the Russian Anti-Doping Agency (1), the VTB United League (1), and more, The Fédération Internationale de Basketball was involved with a quarter of the cases--eight (8) of the thirty-two (32), almost always as the respondent.

The dismissals happened because of issues pertaining to *res judicata* (already adjudicated), *prima facia* bases and burden of proof, jurisdiction to impose sanctions the duty of a internal body of a federation, applicability of rules, admissibility of appeal, admissibility of counter-claims, and so on. The subject matter is even more wide-ranging, with issues like appearance of teams, age/youth of players, doping, and nationality (election/plurality/discrimination).

Jurisdiction was affirmed in the doping and level of experience case, but not the contract and deadline, validity and appealability to CAS, standing for jurisdiction, and exhaustion. None of the cases determining jurisdiction addressed nationality in any substantial fashion.

In addition to topics that include anti-doping, national law in disputes, 3rd parties in arbitration agreements, employment contract issues, and delays in arbitration standards, issues of nationality do span into the upheld cases.

Of all the 32 basketball cases having been heard by the CAS, nationality is addressed merely as a statement of the place of origin (i.e., Croatian, Dutch, Greek, Latvian, Serbian, Spanish, Venezuelan, Yugoslav) of the player and/or the arbitrator. A player's place of origin could be for club purposes (i.e., Hellenic) or national team purposes (i.e., Yugoslav). Further, a legal nationality must be the same as the basketball nationality. Among these cases is also a discussion about the prohibition against discrimination based on nationality.

Finally in one of the fully upheld cases, the panel of arbitrators (France, Greece, UK) critiqued the system's nationality criteria basis for determining a player's place of origin for the purposes of playing basketball in a professional league. They seemed to encourage a system where the criteria would be based on the period of time that the individual plays in national competitions. This panel cautioned against teams substantially or wholly composed of "sporting mercenaries."

Document 4.
Notes to Support Comments
(Internal Document)