MARANGOPOULOS FOUNDATION FOR HUMAN RIGHTS
Ίδρυμα Μαραγκοπούλου για τα Δικαιώματα του Ανθρώπου

CONFERENCE PROCEEDINGS

From Unravelling Commitments to Reinforcing Universality

Reaffirming International Human Rights Law amid Withdrawal and Backsliding

| Edmunds Cepurītis | Pierre d'Argent | Peggy Ducoulombier | Kanstantsin Dzehtsiarou | Ivana Jelić | Maria-Andriani Kostopoulou | Maria-Daniella Marouda | Natasa Mavronicola | Makane Moïse Mbengue | Panos Merkouris | Photini Pazartzis | Linos-Alexander Sicilianos | Jean-Marc Thouvenin | Hélène Tigroudja | Aikaterini (Katerina) Tsampi

◆

VENUE "Alkis Argyriades" Amphitheatre, National and Kapodistrian University of Athens
DATE 26 May 2026

MARANGOPOULOS FOUNDATION FOR HUMAN RIGHTS
ΙΔΡΥΜΑ ΜΑΡΑΓΚΟΠΟΥΛΟΥ ΓΙΑ ΤΑ ΔΙΚΑΙΩΜΑΤΑ ΤΟΥ ΑΝΘΡΩΠΟΥ

CONTENTS

Welcoming Address by MFHR President, Professor Linos-Alexander Sicilianos 1

Panel 1 | From Commitment to Withdrawal — and Back to Engagement..... 4

Opening Remarks 4

Round One 5

Round Two 10

Round Three 18

Panel 2 | International Human Rights Bodies under Pressure..... 25

Opening Remarks 25

Keynote Speech delivered by ECtHR Vice-President Ivana Jelić: Migration, Sovereignty, and the Future of Human Rights Protection 27

Round One 38

Round Two 48

Round Three 55

Panel 3 | Looking Forward: Reinforcing Universality 60

Opening Remarks 60

Round One 60

Round Two 73

Round Three 83

Welcoming Address

Professor Linos-Alexander Sicilianos,
President of the Marangopoulos Foundation for Human Rights

Excellencies,

Distinguished speakers and moderators,

Dear colleagues, dear students,

Ladies and gentlemen,

It is a great pleasure, on behalf of the Marangopoulos Foundation for Human Rights, to warmly welcome you all to this International Conference, *From Unravelling Commitments to Reinforcing Universality: Reaffirming International Human Rights Law amid Withdrawal and Backsliding*, whether you are joining us here in person or online.

Let me begin by saying how pleased we are to bring together such a distinguished group of speakers and participants today. Your expertise and experience will help us reflect together on some of the most important developments in contemporary international human rights law.

The diversity of perspectives represented here — from academia, international courts, human rights treaty bodies and intergovernmental institutions — makes this dialogue particularly valuable.

The Marangopoulos Foundation for Human Rights - a public benefit organisation based in Athens with consultative status at the UN, UNESCO and the Council of Europe - has long worked to promote dialogue on the development and protection of human rights.

It is in this spirit that we are holding today's conference on a topic that is not only timely, but also increasingly urgent.

International human rights law is currently facing a period of significant challenges. On the one hand, its core values — universality, human dignity and equality — remain as important as ever. On the other hand, we are increasingly seeing challenges to the international human rights system: withdrawals or threats to withdraw from treaties, resistance to international courts and monitoring bodies, and growing political pressure on the institutions created to protect human rights internationally.

It is precisely within this tension that this conference is situated. What makes these developments particularly significant is that they do not concern isolated legal disputes alone. They raise broader questions about the resilience of multilateralism and the continued capacity of international institutions to provide meaningful protection in periods of political uncertainty.

At a time of such significant pressures, it is easy to focus exclusively on decline. Yet it is equally important to recognise that the system continues to evolve, adapt, and, in some contexts, even expand through new forms of cooperation and enforcement.

This conference seeks to hold both of these realities in view. It neither downplays the seriousness of current challenges nor assumes that existing structures are beyond repair. Instead, it wishes to underline that rebuilding confidence in the universality and authority of human rights law is possible.

Ensuring open and constructive dialogue is an important first step. At a time when discussions on human rights are becoming increasingly polarised, it is essential to preserve spaces for informed and respectful exchange. Such discussions allow different views to be expressed within a shared commitment to human rights, the rule of law and international institutions. In this respect, academia, civil society, practitioners and human rights experts all have an important role to play.

To analyse the complex challenges that international human rights law currently faces, the conference is structured around three interconnected thematic panels, each approaching the topic from a different perspective.

The first panel, From Commitment to Withdrawal — and Back to Engagement, will focus on recent examples of withdrawal and disengagement from the international human rights system. It will explore why some States choose to step back from international human rights commitments and whether these developments reflect deeper tensions within the system. The discussion will also consider what these trends may mean for the future and stability of international human rights law.

The second panel, International Human Rights Bodies under Pressure, will look at pressures coming from within the system itself. Here, the focus is not on withdrawal, but on situations where States remain part of the system while trying to limit the authority or independence of international human rights bodies. The panel will discuss how these institutions respond to such challenges and what this means for their legitimacy, coherence and effectiveness.

We are also especially honoured that this panel will include a keynote speech by the Vice-President of the European Court of Human Rights, Judge Ivana Jelić, whose presence greatly enriches today's discussions.

Finally, the third panel, Looking Forward: Reinforcing Universality, will take a more forward-looking approach. It will explore possible ways to strengthen the universality and resilience of international human rights law through renewed cooperation, accountability and collective engagement. In this context, the panel will also discuss recent developments in international law, including the growing role of public interest litigation and advisory proceedings before the International Court of Justice.

Together, the three panels aim to move from identifying current challenges to reflecting on possible ways forward. More broadly, the conference seeks both to examine the pressures facing international human rights law today and to explore how its core principles can continue to be defended in a changing international environment.

Another important feature of today's conference is its interactive format. Rather than traditional presentations, the panels will be organised around questions intended to encourage dialogue and exchange among speakers and participants. We hope this format will allow for a more dynamic and open discussion of these complex issues.

At a time when international law is increasingly being challenged, maintaining constructive dialogue and cooperation remains essential. The strength of the international human rights system ultimately depends not only on institutions, but also on the broader community that supports, interprets and applies it. We hope that today's discussions will contribute, even in a modest way, to that effort.

Let me conclude by warmly thanking all of our distinguished speakers and moderators for their participation and valuable contribution to this conference. I would also like to thank the National and Kapodistrian University of Athens for hosting us today, as well as the Marangopoulos Foundation for Human Rights team for their important work in organising this event. Finally, I would like to sincerely thank all of you for being with us today, whether online or in person.

I wish us all a very productive and inspiring conference.

Thank you.

Conference Proceedings

Panel 1

From Commitment to Withdrawal — and Back to Engagement

Moderator: Dr Maria-Andriani Kostopoulou

Speakers: Professor Peggy Ducoulombier · Professor Kanstantsin Dzehtsiarou · Professor Panos Merkouris · Mr Edmunds Cepurītis

Opening Remarks

Dr Maria-Andriani Kostopoulou: Welcome to the first panel of today's conference, *From Commitment to Withdrawal and Back to Engagement*. The title itself suggests a trajectory—and perhaps also a hope.

International human rights treaties are premised on durable commitment. Such durability is not merely incidental; it constitutes the foundation upon which the authority of monitoring bodies rests, state accountability is built, and individuals and communities rely when domestic protection proves insufficient.

For decades, the prevailing assumption was that this trajectory moved in only one direction: towards wider ratification, deeper integration, and stronger compliance. Today, however, that assumption is increasingly under strain. Withdrawal and disengagement have entered the political mainstream in ways that would have been difficult to foresee, appearing across different regions, legal systems, and institutional frameworks. Equally significant is the discourse accompanying these developments. International human rights commitments are increasingly portrayed not as achievements to be safeguarded, but as constraints to be resisted—or even reversed.

This panel seeks to examine these developments from the perspectives of treaty law, institutional design, and political practice. It will explore the causes and consequences of withdrawal and disengagement and consider what their cumulative effect may be for the coherence and long-term viability of the international human rights system. We are fortunate to be joined by Professor Peggy Ducoulombier, Professor Kanstantsin Dzehtsiarou, Professor Panos Merkouris, and Mr Edmunds Cepurītis. Our discussion will proceed through three rounds of focused exchanges.

Round One

Drivers of Denunciation

Dr Kostopoulou: Let us begin with the question of why states choose to disengage from international human rights regimes. Professor Ducoulombier, what are the principal reasons invoked by states when denouncing international human rights conventions or mechanisms?

Professor Peggy Ducoulombier: When states decide to withdraw from, or denounce, a human rights treaty, they frequently attribute responsibility to the international institution concerned. Their decisions are often justified by reference to alleged judicial activism, excessively expansive interpretations of treaty provisions, or perceived encroachments upon state sovereignty, constitutional arrangements, or democratic self-government. In many cases, however, this narrative oversimplifies a far more complex reality.

The denunciation of the American Convention on Human Rights by Trinidad and Tobago provides a useful illustration. Although the decision was formally linked to the death penalty, it was prompted in part by jurisprudence of the Privy Council holding that prolonged periods on death row could amount to inhuman treatment. Combined with the right of individual petition before the Inter-American Commission and the time required to exhaust available remedies, these developments effectively transformed capital punishment into life imprisonment in practice—an outcome regarded by the state as unacceptable. Yet the state's own narrative placed responsibility almost entirely on the Inter-American Commission, which was accused of deliberately prolonging proceedings in order to influence domestic criminal policy.

A similar dynamic can be observed in the case of Venezuela, where international institutions were portrayed as misapplying rules of international law, including the exhaustion of domestic remedies requirement, in pursuit of political objectives directed against the state. Once again, responsibility was attributed to the international tribunal rather than to underlying domestic factors.

This raises the question whether accusations of judicial activism have any basis in the jurisprudence of the principal human rights courts. It is true that the Inter-American Court has adopted a particularly dynamic approach to interpretation, relying on concepts such as the international *corpus juris* to maximise human rights protection. Likewise, from a European perspective, certain aspects of the African system—particularly the use

of provisional measures in politically sensitive contexts such as electoral disputes—may appear striking. To that extent, some criticism cannot be dismissed outright, especially since debates over interpretative approaches also exist within the courts themselves.

The European system, however, has developed mechanisms that have helped preserve state engagement. The doctrine of the margin of appreciation, together with political supervision by the Committee of Ministers, has arguably contributed to maintaining states within the system, notwithstanding exceptional cases such as Greece and Russia. Whether this is always desirable is a separate question. Yet even the European Court of Human Rights, often viewed as comparatively restrained, continues to face accusations of judicial activism. Responsibility is almost invariably placed on the court.

At the same time, it would be difficult for the African Court or the Inter-American Court simply to import interpretative tools developed in the European context. These institutions operate within different legal and political environments and pursue distinct objectives. State demands are sometimes impossible to accommodate. One cannot meaningfully invoke the margin of appreciation where judicial independence is absent, nor can it provide an adequate response to situations involving mass atrocities. In this respect, decisions such as *Ajavon* and *Ingabire* were, in my view, entirely justified.

Moreover, when dealing with what Professor Dzehtsiarou has described as a "rogue state", such as Venezuela, altering jurisprudence in response to political pressure would amount to abandoning the court's essential function. In any event, such concessions would be unlikely to prevent withdrawal. Even where jurisprudence has subsequently evolved, this does not alter the fact that the cases underlying the withdrawal of Article 34(6) declarations by Benin and Côte d'Ivoire would have been decided in substantially the same manner.

The broader point is that the principal reasons for withdrawal are usually domestic. They are often presented as the consequence of irresponsible judicial behaviour, when in reality they stem from internal political considerations. This does not mean that state concerns should be ignored. International law necessarily requires engagement with states' criticisms, and some interpretative techniques remain the subject of legitimate debate, including within the institutions themselves. Where possible, such concerns should be addressed in order to prevent escalation. Nevertheless, withdrawal should not be avoided at any cost.

Legitimacy and the "Rogue State" Dilemma

Dr Kostopoulou: The question of withdrawal naturally leads to a broader issue: what are the implications for the organisation that remains behind? Membership and institutional legitimacy are closely connected. Professor Dzehtsiarou, what best serves the legitimacy of a human rights organisation: retaining a "rogue" state and continuing engagement, or excluding it in order to prevent internal erosion?

Professor Kanstantsin Dzehtsiarou: I would begin by fully endorsing Professor Ducoulombier's concluding observation that withdrawal should not be prevented at all costs. International organisations sometimes appear to assume that the departure of a member state would be catastrophic. In my view, that assumption requires closer scrutiny.

In a 2018 article co-authored with Donald Coffey in the *International and Comparative Law Quarterly*, written in the context of growing tensions between Russia and the Council of Europe, we argued that decisions concerning withdrawal and expulsion should be approached rationally. Institutions must weigh competing risks and assess, in a proportionate manner, the benefits and costs of retaining a state within the organisation.

One important consideration is institutional reputation. Retaining a member whose principal objective is to undermine the organisation's authority cannot be justified on the assumption that continued dialogue will eventually transform that state into a model of compliance with the rule of law. Such outcomes are possible, but experience suggests that they are far from inevitable. Persisting with this approach may instead damage the legitimacy of the organisation as a whole.

A second argument often advanced against expulsion is that it terminates dialogue and deprives individuals of access to international mechanisms such as the European Court of Human Rights. This concern is entirely legitimate and should not be underestimated. Nevertheless, it must be again assessed within a broader institutional context. Where a state consistently refuses to address serious structural deficiencies, initiating expulsion or withdrawal procedures may serve an important signalling function for other member states. In the Russian case, it had long been evident that meaningful participation within the Council of Europe had largely ceased and the expulsion process could have been started at least a few years before Russia started the full scale war against Ukraine in 2022. Here the organisation found itself compelled to proceed rapidly with an expulsion process of contested legality in order to make a political point, despite years of warning signs.

Ultimately, no single factor can determine the appropriate response. Although the right of individual petition is of immense importance, it cannot automatically outweigh every

other consideration. Decisions concerning withdrawal and expulsion require a holistic assessment of what is realistically achievable and what best serves the long-term integrity of the institution.

Is the Rise in Withdrawals Real?

Dr Kostopoulou: Before proceeding further, it is worth examining one of the assumptions underlying our discussion: namely, that withdrawals are becoming more frequent. Professor Merkouris, is there in fact a significant increase in withdrawals from treaties, particularly human rights treaties, or are we simply more attentive to the phenomenon today?

Professor Panos Merkouris: The answer is perhaps unsatisfactory, but I believe further research is needed. Much depends on how the available data are assessed. States frequently announce their intention to withdraw, yet whether they ultimately do so—and whether withdrawal is legally effective—are distinct questions.

The picture also varies depending on what is being measured. One may count the absolute number of withdrawals, or instead assess withdrawals against the much broader phenomenon of treaty proliferation over recent decades. The significance of a given number of withdrawals may look very different when considered in light of the vastly increased number of treaties currently in force. Similarly, conclusions may differ depending on whether bilateral denunciations are treated in the same way as withdrawals from multilateral arrangements.

Part of the perception of crisis may stem from the broader political climate. Treaty withdrawals coincide with debates over judicial activism, disputes concerning the use of force, armed conflict, and a wider scepticism towards international law. These developments dominate public discussion and inevitably make withdrawals appear more prominent than they may have in the past. As a result, individual instances sometimes seem more dramatic than they actually are. The widely circulated claim that the United States intended to withdraw from sixty-six international organisations illustrates this point: much of the discussion concerned funding arrangements and participation in particular agencies rather than withdrawal from actual international organisations.

That said, genuine examples do exist. Current debates surrounding the World Health Organization provide an illustration. Argentina and the United States' proposed withdrawals were considered by the Director-General (in January 2026), then by the Executive Board (in February 2026) and the General Assembly (in May 2026), with

different approaches adopted by each of these organs and with respect to each State's claim of withdrawal. Yet even here, historical perspective is important. Similar withdrawal attempts occurred during the 1940s and 1950s, and were addressed through arrangements involving periods of inactivity rather than formal denunciation. Comparable examples can be found in relation to UNESCO.

Accordingly, withdrawal is not an entirely new phenomenon. What may have changed is the degree of attention it receives. Whether withdrawals are genuinely increasing remains an empirical question that should be answered on the basis of evidence rather than assumptions. While international law is undoubtedly facing a period of crisis, crises can also create opportunities for institutional adaptation and greater legal clarity.

Latvia and the Istanbul Convention: Understanding the Reversal

Dr Kostopoulou: It is often useful to move from the general to the specific. Latvia presents a particularly interesting case. Mr Cepurītis, how did the Latvian parliament come to vote on withdrawal from the Istanbul Convention only one year after ratification, and what is the current situation?

Mr Edmunds Cepurītis: In many respects, the title of this panel accurately captures Latvia's experience. The Istanbul Convention was ultimately ratified through a broad governing coalition bringing together progressive, centrist, and conservative political forces. This coalition, however, remained fragile and faced constant pressure from opposition parties seeking to exploit internal divisions.

I speak both as a progressive politician and as a member of the Parliamentary Assembly of the Council of Europe, but also as a representative of a country concerned with its international reputation. The parliamentary vote in favour of withdrawal was subsequently reversed and indefinitely postponed. I hope the issue will not return.

In my view, what occurred was fundamentally a failure of political leadership that was corrected by the strength of society itself. Civil society organisations, public institutions, professionals, and ordinary citizens mobilised effectively and succeeded in reversing a political mistake. The episode therefore revealed both a weakness and a strength: a failure on the part of political actors, but also a remarkable demonstration of civic engagement.

Several factors contributed to the situation. First, the governing coalition was exceptionally broad and politically fragile; indeed, the government collapsed only recently, several months before the upcoming elections. Second, Latvian political parties

are comparatively weak. Many are relatively new and have limited membership bases. As a result, there were too few individuals within the political system prepared to insist that human rights issues should not become instruments of ordinary political bargaining.

Third, certain political forces remain sceptical of European mechanisms that reinforce judicial independence and the rule of law. Similar tendencies can be observed elsewhere in Europe. Some actors would prefer fewer institutional constraints and greater political influence over the judiciary. In Latvia, this attitude is partly linked to legacies of the post-Soviet transition period. Elements of that legacy remain present in the political landscape and are often directed against European systems of accountability, whether those of the European Union or the Council of Europe. The Istanbul Convention became one of the targets of this broader scepticism.

The withdrawal initiative therefore resulted from a convergence of political factors. Fortunately, its proponents underestimated the response of society. Thousands of people participated in public demonstrations under the slogan "No to violence, yes to the Convention." Such public mobilisation in defence of an international treaty is unusual. I believe this experience will remain significant in Latvia's collective memory and may serve as an important safeguard for these principles in the future.

Round Two

Comparing Risks Across Human Rights Systems

Dr Kostopoulou: We have discussed the drivers of withdrawal and the limits of institutional responses. Yet the consequences of disengagement do not affect all systems equally. Professor Ducoulombier, do the various international human rights systems face comparable risks when confronted with withdrawals and exclusions, or are some more vulnerable than others? More broadly, does withdrawal or exclusion necessarily weaken an international organisation?

Professor Ducoulombier: This question overlaps to some extent with the issue Professor Dzehtsiarou addressed earlier. The answer ultimately depends on a range of factors. One must consider whether the organisation is long established or relatively recent, the characteristics of its member states, and the degree of homogeneity within the organisation. Does it consist primarily of consolidated democracies, newer democracies, or states facing more serious human rights challenges? These factors significantly affect an organisation's resilience.

It should also be noted that established democracies do not necessarily present the least problematic cases. Threats of withdrawal originating from such states may be more difficult to manage because they may perceive the political and reputational costs of withdrawal as relatively low. By contrast, newer democracies may be more inclined to comply with institutional requirements in order to demonstrate their commitment to democratic governance. Contemporary debates in the United Kingdom illustrate this dynamic. Certain political actors argue that withdrawal from the Council of Europe or denunciation of the European Convention on Human Rights would not be comparable to Russia's departure because the United Kingdom is a long-established democracy. Financial considerations also play an important role and may affect some systems more severely than others.

In this respect, the African system appears to be in the more precarious position. The African Court is a comparatively recent institution and was only beginning to consolidate its authority when a number of states started disengaging, beginning with Rwanda and followed by others. At the same time, only a limited number of states have accepted the Court's jurisdiction under Article 34(6) of the Ouagadougou Protocol.

I would hesitate to describe this development as a strict domino effect, since each state has its own reasons for disengagement. Nevertheless, when states provide explanations for their decisions, they often invoke the example of others. Benin's Ministry of Justice, for instance, explicitly referred to the withdrawals of Rwanda and Tanzania in order to demonstrate that its decision was not exceptional but rather a response to broader systemic concerns. Thus, even where the underlying motivations are domestic, previous withdrawals can serve as precedents that states invoke to justify their own actions.

The African system faces an additional challenge because states may withdraw their declarations accepting the Court's jurisdiction over individual applications without denouncing the African Charter itself. Although the legal position is not entirely settled, such a possibility appears plausible. As a result, states may perceive the reputational costs of disengagement as lower, since they formally remain parties to the Charter. Furthermore, cooperation between the African Commission and the African Court remains limited, as the Commission rarely refers cases to the Court. The African Union has also not provided the same degree of institutional support that the Council of Europe affords the European Court of Human Rights.

The situation differs in the Inter-American system. In *Ivcher Bronstein*, the Inter-American Court made clear that withdrawal is effectively an all-or-nothing choice: a state

may denounce the Convention, but it cannot simply withdraw its acceptance of the Court's jurisdiction. Consequently, states contemplating withdrawal face a more consequential decision. In practice, Venezuela is still regarded as part of the system, while Nicaragua, despite withdrawing from the Organization of American States, has not denounced the American Convention, allowing the Court to continue hearing cases concerning the state.

The European system is similar in this respect. A state wishing to withdraw must denounce the Convention itself. In my view, a strong argument can also be made that a state cannot remain a member of the Council of Europe while denouncing the Convention. Although this is not expressly stated in the relevant instruments, such a course of action could arguably amount to a violation of Article 3 of the Council of Europe Statute. This may be one reason why states think carefully before pursuing withdrawal.

At the same time, the Council of Europe is not immune from the effects of growing internal criticism. Whether withdrawal ultimately weakens an organisation depends largely on how one conceives its purpose. If the objective is to include as many states as possible in the pursuit of human rights protection, withdrawal is clearly damaging. If, however, the organisation functions more as a community of democratic states committed to certain fundamental values, then some forms of conduct may simply become unacceptable from the perspective of institutional credibility.

Testing the "Domino Effect"

Dr Kostopoulou: You referred to the possibility of a domino effect. One of the recurring concerns in these discussions is that a single withdrawal may encourage others, gradually leading to the erosion of the system as a whole. Professor Dzehtsiarou, is this concern justified? Do withdrawals genuinely trigger further withdrawals?

Professor Dzehtsiarou: The argument is certainly intuitive. It is easy to imagine that if one influential state withdraws, others may follow, eventually producing a broader institutional crisis. This concern often explains why organisations are reluctant to allow members to leave and seek to avoid creating precedents.

However, I am not aware of substantial empirical evidence supporting the claim that one withdrawal typically leads to many others, let alone to a cascade of departures resulting in institutional collapse. If examples exist, I would be genuinely interested in examining them. My impression is that organisations do not commonly collapse because a single member departs; rather, collapse results from the interaction of multiple factors. The

League of Nations is perhaps the clearest historical example, and its demise cannot be attributed to any one withdrawal alone.

I often use the metaphor of a tower built from children's blocks. My four-year-old son enjoys building such towers. If he removes a block from the top, very little happens. If he removes a block from the middle or the base, however, the entire structure may collapse. The real challenge, therefore, is identifying the foundational elements of a particular organisation and determining which components are indispensable to its survival.

Several examples suggest that withdrawal alone rarely produces a domino effect. As Professor Ducoulombier has explained, a number of states have withdrawn from aspects of the Inter-American system, yet the system continues to function. The United States withdrew from the Venice Commission during the Trump administration, but the Commission remained unaffected institutionally. Similarly, following the United Kingdom's withdrawal from the European Union, many predicted that other states would follow. This as we now know has not happened. Consequently, I see little evidence that withdrawals automatically generate broader waves of disengagement.

What poses a more serious threat are deeper structural developments. A major war in Europe, for example, would likely undermine the very foundations of the Council of Europe because it would call into question the organisation's underlying purpose. The same could be said of the European Union and many other regional institutions. In that respect, the experience of the League of Nations remains instructive.

You also raised a related hypothetical question: what would happen if the United Kingdom were to denounce the European Convention on Human Rights tomorrow? Politically, I believe such a step should result in withdrawal from the Council of Europe. Legally, however, the matter is more complicated. The Convention postdates the Council of Europe Statute, and technically a state does not need to be a party to the Convention in order to be a member of the Council of Europe. The reverse is generally true: a state cannot become party to the Convention without first being a member of the Council of Europe. The sole exception occurred briefly in relation to Russia, which remained a party to the Convention for a short period after ceasing to be a member of the organisation.

Whether the Council of Europe would wish to retain a member state that is not party to the Convention therefore remains an important legal and political question. My own answer would be negative.

Grey Areas of Treaty Withdrawal

Dr Kostopoulou: Beyond these broader institutional dynamics, significant legal questions remain regarding the operation of withdrawal clauses in human rights treaties. Professor Merkouris, are there still unresolved issues concerning treaty withdrawal under both the Vienna Convention on the Law of Treaties and customary international law? If so, how do these issues affect human rights treaties in particular?

Professor Merkouris: The short answer is that almost everything remains open to debate. This is one of the consequences of the inherent indeterminacy of legal language.

To continue briefly with the discussion of the domino effect, historical examples suggest that treaty withdrawals do not necessarily threaten the survival of the treaty regime itself, or may not be the only or most effective way in which it can be threatened. The Washington Naval Treaties, for instance, generated attempts by states to circumvent their obligations, not only through outright denunciations but also through interpretative loopholes, technological change and sometimes "creative" bookkeeping. Bolivia, as well, withdrew from the Single Convention on Narcotic Drugs, yet, subsequently re-acceded with a reservation concerning the traditional practice of coca-leaf chewing. Discussions continue regarding alternative legal solutions to withdrawal, including *inter se* modifications. The treaty nevertheless remains in force. I therefore agree that conclusions regarding contagion effects should be based on evidence rather than assumption.

Turning to treaty withdrawal more directly, one of the issues I find most problematic concerns Article 56 of the Vienna Convention and its reference to the "nature" of a treaty. Remarkably, the term appears only once in the Convention, yet it plays a crucial role. Examination of the ILC discussions reveals that the members initially sought to avoid using the term altogether. Nevertheless, during the Vienna Conference on the Law of Treaties it was inserted as a last minute addition to Article 56 as an objective criterion for determining whether a treaty lacking an express withdrawal clause nevertheless permits withdrawal by implication of its "nature".

This raises significant interpretative difficulties. If the criterion does not reflect customary international law, which is a matter of debate, then Article 56(1)(b) of the Vienna Convention becomes meaningless, as its very existence is dependent on the criterion being of a customary nature. Yet it continues to occupy a central place in contemporary debates. Various categories of treaties have been invoked in this context, including *modi vivendi,* trade agreements, cooperation agreements, dispute-settlement treaties, and constitutive instruments of international organisations. Although most treaties establishing international organisations contain withdrawal clauses, there are notable

exceptions. The European Union lacked such a provision until the Treaty of Lisbon, and extensive scholarship developed around the possibility of withdrawal even before Article 50 was introduced. However, even the inclusion of withdrawal clauses is by no means a sure-fire way of ensuring certainty and predictability. The recent *Wightman* judgment proves this point as it had to tackle further unresolved questions concerning the revocability of a withdrawal notification.

Similar issues have recently arisen within the World Health Organization. Both the United States and Argentina have expressed intentions to withdraw. In the case of the United States, the legal situation is particularly interesting because the United States' joining the WHO was made contingent upon reserving the right to withdraw upon one year's notice, provided that its financial obligations to the organisation had been fully discharged for the relevant fiscal year. In January 2026, the Director-General suggested that this condition might not be satisfied because the suspension of US voting rights for unpaid contributions was under consideration.

What makes this significant is that the condition does not appear in the treaty itself. The issue therefore intersects directly with Article 56, which recognises an implied right of withdrawal where such an intention can be inferred from, among others, the circumstances surrounding the treaty's conclusion. WHO's historical practice of treating certain states as "inactive" rather than as having formally withdrawn is also worth considering. Recent discussions within the organisation, surrounding Argentina's claim to withdrawal, suggest a continuing preference for this pragmatic approach.

Another example concerns the United States' withdrawal from the Optional Protocols to the Vienna Conventions on Consular and Diplomatic Relations. These withdrawals were prompted, respectively, by the *Avena* judgment and by litigation brought before the International Court of Justice by Palestine against the United States relating to the relocation of the United States embassy to Jerusalem. Although the International Court of Justice in *Request for Interpretation of the Avena Judgment* did not address the legality of withdrawal in any substantial manner, it appeared *in passim* to implicitly accept the possibility despite the absence of an express withdrawal clause.

This raises an intriguing question, are these withdrawals permitted under customary law, given that the United States is not a party to the Vienna Convention, or not? Leaving aside the question of potential applicability of the customary law equivalent of Article 54(b) or of 56(1)(a) of the Vienna Convention could one argue that these Optional Protocols are the type of treaties that by their "nature" allow for withdrawal, or rather, in the style of

the Inter-American Court, that the specific nature of this instrument, an optional protocol on judicial settlement closely connected to the underlying Convention, should be allowed only if the state can and/or does withdraw from the Convention as well? The matter is further exacerbated by the fact that neither the Vienna Convention on Diplomatic Relations nor the Vienna Convention on Consular Relations has a withdrawal clause either. The issue remains frustratingly unresolved. For this reason, I regard the "nature" criterion in Article 56 as one of the most important—and still unresolved—areas of contemporary treaty law.

The issue is particularly significant for human rights treaties. While I do not dispute that such treaties possess distinctive characteristics and arguments based on the special nature of human rights treaties are more than likely to outright decide the matter or at least carry considerable weight, nonetheless, it is important to bear in mind the structure of Article 56 of the Vienna Convention. That article establishes a *negative presumption*, i.e. a presumption against withdrawal in the absence of an express clause. Consequently, the burden of proof falls squarely upon the state seeking to justify withdrawal. It is incumbent upon that state to demonstrate that the "nature" of the treaty allows for such withdrawal, not for others to demonstrate that the treaty has distinctive characteristics that disallow it. The point may seem like splitting hairs, but in fact it is crucial in determining properly where the burden of proof lies, and also as a matter of outcome how many more treaties, even those that do not share, or do not share in their entirety, the distinctive characteristics of human rights treaties, may enjoy the protective presumption of Article 56.

How Disinformation Gains Political Traction

Dr Kostopoulou: The legal and political dimensions of these developments are closely intertwined. Let us return to the Latvian experience. Mr Cepurītis, our discussion has emphasised the importance of evidence and data, yet public debate is often shaped by disinformation. How has disinformation concerning the aims and content of the Istanbul Convention gained traction within political circles in Latvia, and perhaps in other states that have delayed ratification?

Mr Cepurītis: My transition from academia into politics has been instructive in this regard. In academic settings, the focus is often on establishing the validity of conclusions; in politics, the challenge lies in translating those conclusions into concrete action. The Latvian experience surrounding the Istanbul Convention illustrates this difficulty.

Throughout the more than ten years that elapsed between signature and ratification, and again during the parliamentary vote on withdrawal, none of the political forces actually argued that less should be done to combat violence against women or domestic violence. Nor did they claim that existing protections were already sufficient. Instead, the argument was that these objectives could be achieved domestically and that the Convention somehow impeded rather than supported them.

Responding to such claims is extremely demanding. It requires engaging with each provision of the Convention and demonstrating, point by point, that the allegations are unfounded. This is a time-consuming process and one that political parties are often ill-equipped to undertake. They frequently lack both the resources and the public trust necessary to sustain such a detailed conversation over an extended period.

For this reason, disinformation surrounding the Convention proved remarkably resilient during the years between signature and ratification. I believe this is not unique to Latvia. Across Europe, significant resources have been devoted to developing and disseminating narratives opposing the Convention, although their effectiveness has varied from country to country.

In Latvia, one contributing factor is the legacy of fifty years of Soviet occupation. That period disrupted the development of an independent and active civil society capable of organising collectively and defending its interests. Although more than three decades have passed since independence was restored, these historical effects remain visible. Civil society in Latvia is still less deeply rooted than in many Western European states, where such historical interruptions did not occur.

At the same time, a range of organisations and foundations have invested heavily in producing materials, arguments, and campaigns directed against the Convention. Some have received support from actors linked to the Hungarian government, others from private sources. Russian influence has also played a significant role. In this respect, I would respectfully disagree with the suggestion that Russia was passive within the Council of Europe framework. With regard to the Istanbul Convention specifically, Russian actors were actively involved in producing and disseminating disinformation.

There has been a substantial exchange of resources, expertise, and strategic know-how among these organisations across Europe, particularly in the eastern part of the European Union. One reason for their success is their strong focus on influencing political actors directly. They have invested considerable effort in cultivating relationships with political

parties, identifying gaps in expertise, and operating in spaces where civil society organisations were either absent or reluctant to challenge politicians directly.

This, in my view, explains how disinformation of such scale was able to penetrate political debate and decision-making processes. The issue of funding is particularly important. Vast financial resources—amounting to hundreds of millions of euros from Russia and potentially other sources—have been directed towards identifying and exploiting institutional and political vulnerabilities.

The Istanbul Convention itself is unlikely to be the ultimate objective of these efforts. Rather, it appears to form part of a broader strategy that also targets other European legal instruments and institutions, including the European Convention on Human Rights. The Convention simply became one of the most visible arenas in which these wider political objectives were pursued. While this is the case I know best, I suspect that similar vulnerabilities, supported by similar networks and funding structures, exist elsewhere.

Dr Kostopoulou: What I find particularly concerning is the apparent inability of facts and evidence alone to counter certain forms of disinformation. Narratives built upon fear—claims that families, communities, or national identities are under threat—can be extraordinarily powerful. Such arguments are difficult to confront because empirical evidence is often insufficient to dispel anxieties rooted in emotion rather than fact. With that observation, let us move to our third and final round of questions.

Round Three

Withdrawal Threats and their Impacts on the Case Law of International Courts

Dr Kostopoulou: It is clear that legal and political considerations are closely interconnected, and that international courts operate within a broader political environment. Professor Ducoulombier, do threats of withdrawal—or actual withdrawals—affect the jurisprudence of international courts?

Professor Ducoulombier: The answer must be nuanced and depends on the particular court and legal context under consideration.

Take, for example, Benin and Côte d'Ivoire's withdrawal of their declarations accepting the jurisdiction of the African Court to receive individual applications, particularly in relation to provisional measures. If one examines the Court's subsequent jurisprudence, a certain shift is visible. The Court has adopted a more cautious approach to provisional

measures in electoral disputes. However, this development should not be overstated. In other areas, including cases concerning an applicant's health, security, or dignity, the Court has remained robust in its protection of rights. Nor has it retreated from its positions regarding political opposition, judicial independence, or other core issues. The Court has also continued to develop its jurisprudence in emerging areas, including environmental protection. Consequently, it would be inaccurate to suggest that withdrawals have fundamentally altered the Court's overall direction.

The situation is more complex in the European system. It has become commonplace to argue that, in response to political pressure from certain states, the European Court of Human Rights has become more cautious or even regressive. I would not characterise the situation in those terms. A distinction must be drawn between failing to advance and moving backwards. The two are not the same.

On issues such as jurisdiction and other foundational aspects of Convention law, the Court's jurisprudence remains broadly consistent with its previous case law and with defensible interpretations of international law. It is true that there has been little expansion in certain politically sensitive fields, particularly migration, where some states regard further developments as unacceptable. At the same time, important evolution has occurred elsewhere. The doctrines of subsidiarity and the margin of appreciation have assumed greater prominence, alongside what is often described as the Court's procedural turn.

One could attribute these developments entirely to political pressure, but the reality is more complicated. The Convention system has evolved over more than seventy-five years. States have incorporated Convention standards into their domestic legal orders, and national courts have become increasingly capable of applying Convention principles. It is therefore logical that the Strasbourg Court should recognise these developments, particularly where domestic courts function independently and engage seriously with Convention jurisprudence.

Political pressure has undoubtedly played a role, not least through the adoption of new protocols and amendments to the Convention's preamble. Nevertheless, these developments also reflect broader institutional evolution, changing judicial understandings of the Court's role, and the practical pressures generated by a growing caseload. Even so, there are limits to how far the Court can adapt. It is not going to rewrite Article 3 of the Convention. The judgment in *Sanchez-Sanchez v. United Kingdom*

illustrates how the Court can accommodate certain state concerns in the extradition context without abandoning the fundamental protection afforded by Article 3.

The Inter-American Court offers an instructive contrast. Despite increasing calls—from both governments and some academic commentators—for the introduction of a doctrine resembling the margin of appreciation, the Court has not altered its fundamental interpretative approach. Even following tensions involving Venezuela and Nicaragua, it has continued to employ the same interpretative techniques, to recognise new autonomous rights, and to adopt an ambitious approach to human rights protection. This reflects the Court's understanding of its institutional role and of the objectives it seeks to pursue.

Engagement After Withdrawal or Expulsion

Dr Kostopoulou: The dilemma does not end once a state withdraws or is expelled. Professor Dzehtsiarou, should international organisations continue to engage with states after withdrawal or expulsion? If so, what form should such engagement take?

Professor Dzehtsiarou: Before addressing the question directly, let me make two brief observations.

First, I agree entirely with Professor Ducoulombier that courts should be attentive to legitimate state concerns. However, attentiveness must never become accommodation for its own sake. Appeasing states will not save international courts. If a government is determined to challenge a court, it will almost always find a reason to do so. The difficult question is where to draw the line between responding to legitimate concerns and simply yielding to political pressure. That distinction is not always easy to identify, but it is one that courts must navigate carefully.

Second, I would like to clarify a point raised earlier by Mr Cepurītis regarding the role of Russia within the Council of Europe. I would argue that despite compliance with certain individual judgments of the European Court of Human Rights and the payment of compensation in some politically significant cases, Russia failed to implement the structural reforms required by the Convention system. In that respect, however, Russia was hardly unique. A few years ago, I read the report of the Independent Investigation Body on the allegations of corruption within the Parliamentary Assembly covering so-called "caviar diplomacy" within the Council of Europe. The report provides a striking illustration of the ways in which certain states sought to exert influence within the

organisation and raises broader concerns about corruption among Council of Europe actors more broadly.

Turning to the broader question, the Council of Europe offers a useful case study because it has experienced only two departures in its history: Greece during the military dictatorship and, more recently, Russia. For many years, Greece was the only meaningful precedent. Russia's departure therefore presented the organisation with a much more complex challenge.

The Council of Europe has attempted, with limited success, to maintain certain forms of engagement with Russia. One initiative involved creating mechanisms within the Parliamentary Assembly intended to give voice to representatives of the Russian democratic opposition. Similar arrangements have been developed vis-à-vis Belarus, which has never itself been a party to the Convention or a member of the Council of Europe. These initiatives have generated debate regarding representation, legitimacy, and effectiveness, and it remains unclear whether they have achieved their intended objectives.

A second issue concerns the European Court of Human Rights itself and its continuing examination of pending Russian cases. Russia's departure has, in some respects, provided the Court with greater freedom. In cases such as *Ukraine and the Netherlands v. Russia* or *Fedotova v. Russia*, the Court has been able to articulate legal principles and factual findings with exceptional clarity, unconstrained by concerns regarding future political reactions from the respondent state. These judgments will undoubtedly form part of the Court's long-term jurisprudential legacy.

At the same time, courts are not academic institutions producing abstract analyses. Their judgments are intended to be implemented. In the Russian context, implementation is currently absent and is unlikely to occur unless there are profound political changes within Russia or within the broader European framework. This raises a difficult question about the allocation of institutional resources and the practical value of adjudication in circumstances where compliance appears unattainable.

Withdrawing Declarations on Dispute Settlement

Dr Kostopoulou: Much of our discussion has focused on withdrawal from treaties themselves. Yet states can also disengage through more targeted measures, particularly by withdrawing declarations accepting dispute-settlement mechanisms. Professor Merkouris, what legal issues arise in this context?

Professor Merkouris: Let me preface this by saying that a great deal of what I am about to discuss, my learned colleagues have already touched on, and rather more proficiently than I will manage. I will focus specifically on declarations accepting jurisdiction and their withdrawal.

The Inter-American Court's judgment in *Ivcher Bronstein* remains the central point of reference. The Court held that, given the special character of human rights treaties and the integral relationship between jurisdictional acceptance and the protection of rights, a state cannot simply withdraw its declaration accepting the Court's jurisdiction while remaining party to the Convention. Withdrawal must occur, if at all, through denunciation of the Convention itself. This concerned Peru's attempt to withdraw its declaration, and it had, if not exactly a domino effect, certainly a spillover effect on how other states approached the question.

Specifically, this informed debates surrounding Venezuela's attempted withdrawal from the Convention in 2012 and later developments, including *Advisory Opinion 26/20*, which set out certain democratic standards governing when denunciation is permissible. In the 2025 judgment of *Chirinos Salamanca v. Venezuela*, where the Court treated Venezuela's 2019 re-ratification as covering the period from 2013 onward continuously, in effect finding that the original withdrawal, in substance, never produced any effects. This is a saga, I think, that we have not yet seen the end of.

The African Court has adopted a different approach. It drew inspiration from Article 56(2) of the Vienna Convention, while being explicit that this provision does not, strictly speaking, apply to these declarations — applying, by a kind of analogy, the same twelve-month notice period. Rwanda, Tanzania, Benin, Côte d'Ivoire, and, most recently, Tunisia have all followed this path. One estimate suggests that these withdrawals have effectively removed approximately thirty per cent of individual applications from the Court's jurisdiction.

This represents a significant reduction in the Court's effectiveness from the perspective of individual applicants and civil society organisations. More broadly, it illustrates the divergence that continues to exist among regional systems regarding the relationship between treaty commitments and dispute-settlement mechanisms.

Selling Withdrawal to Voters

Dr Kostopoulou: Let us conclude by returning to the political dimension. Arguments in favour of withdrawal are rarely framed in legal terms. They are usually presented as

responses to the concerns of ordinary citizens and as promises of better outcomes. Mr Cepurītis, how is withdrawal from instruments such as the Istanbul Convention presented to voters? What are its proponents seeking to achieve politically?

Mr Cepurītis: The issue ultimately returns to a question raised at the beginning of this conference: are international treaties and human rights systems regarded as collective achievements, or are they perceived as obstacles preventing governments from acting in the interests of their own populations?

From an academic perspective, the answer may seem relatively straightforward. In politics, however, facts alone rarely determine outcomes. Public attitudes are shaped by perceptions, emotions, and concerns that can be transformed into political capital. Disinformation succeeds only when it resonates with underlying anxieties that already exist.

In my view, two concerns are particularly important.

The first relates to effectiveness—or, perhaps more accurately, the perception of effectiveness. Citizens ask whether international institutions genuinely solve their problems. Given the size and diversity of Europe, many people naturally wonder whether decision-makers in Strasbourg or Brussels truly understand their concerns or whether these institutions have become too remote from everyday life.

The second concerns judicial independence and democratic legitimacy. Critics often frame international supervision as an external imposition. In debates concerning domestic violence, for example, one frequently hears arguments that national societies understand their own circumstances best and should therefore be left to develop their own solutions without external interference.

Although I am presenting these arguments somewhat as a devil's advocate, I believe it is essential to understand the sentiments on which such narratives rely. Once those underlying concerns are identified, responding to them becomes considerably easier than attempting to rebut every piece of disinformation individually.

My principal recommendation is therefore that these concerns should be taken seriously. Defenders of international human rights systems need to demonstrate their practical value more effectively. They must continue telling the story of how these institutions were built, the aspirations that inspired them, and the democratic achievements they represent.

Independent courts capable of protecting individuals against abuses of power are not abstract ideals; they provide tangible benefits. Similar dynamics can be observed beyond the human rights field. For example, discussions surrounding the European Union's rule-of-law conditionality demonstrate that many citizens place considerable trust in external safeguards and constraints. In some cases, they trust these institutions more than their own political leaders.

I believe this is precisely what occurred in Latvia. Thousands of people mobilised in support of the Istanbul Convention because they viewed it as a practical instrument for protecting people they knew and cared about. They trusted the values represented by these institutions. That is where attention and resources should be directed: towards demonstrating that these institutions possess not only expertise and legal authority, but also values that resonate with ordinary people across Europe.

Conference Proceedings

Panel 2

International Human Rights Bodies under Pressure

Moderator: Professor Photini Pazartzis

Keynote Speaker: Judge Ivana Jelić, Vice-President of the European Court of Human Rights

Panel Speakers: Professor Maria-Daniella Marouda · Professor Natasa Mavronicola · Dr Aikaterini (Katerina) Tsampi

Opening Remarks

Professor Photini Pazartzis: Good afternoon, everyone, and welcome back after our short lunch break. This is the second panel of today's conference, entitled International Human Rights Bodies under Pressure. Before introducing our panel, however, allow me a brief right of reply to an issue raised during the first panel.

With this discussion, we move away from withdrawal—arguably the most dramatic form of pressure affecting international human rights courts and mechanisms—and turn instead to the ways in which these bodies are challenged from within. We are particularly fortunate, and I thank the organisers for this, to have with us a distinguished group of specialists who have worked directly within international human rights institutions, including ECRI, the European Court of Human Rights, and other supervisory mechanisms.

Listening to the first panel, and setting aside the empirical question of whether withdrawals account for ten per cent of cases or some other figure—which is ultimately not the central issue—I found myself reflecting on other forms of pressure. States may remain formally committed to the system while simultaneously contesting or obstructing it from within. It is worth asking whether this type of internal contestation may, in certain respects, pose an even greater challenge than formal withdrawal. It is precisely this question that I hope we will explore during our discussion today.

The international human rights system, together with the regional systems that complement it, is undoubtedly operating under considerable strain. Some of these pressures originate outside the institutions themselves: geopolitical conflict, the rise of conservative and populist governments, and broader challenges to the international legal

order. At the same time, it is equally important to examine the pressures that arise from within the institutions, as this provides a useful additional perspective on how these challenges manifest themselves in practice.

When I suggest that internal contestation may sometimes be more dangerous than withdrawal, I have in mind a conversation I had during the break with former colleagues from the Human Rights Committee. Some states possess an exceptionally sophisticated understanding of both the substantive law and the procedural framework governing international supervisory mechanisms. From my own experience, these are often the most effective challengers of the system, precisely because they know it so well and are able to contest it from within.

There is also a broader institutional question. One might ask whether the remarkable development of the international human rights system has, in some respects, made it a victim of its own success—particularly within the United Nations framework. We now have ten treaty-monitoring bodies, each entrusted with overseeing a specialised area of human rights protection, yet the United Nations increasingly struggles to provide them with the necessary institutional support. These mechanisms did not emerge accidentally. They were created by states themselves, through treaty negotiations—albeit often under sustained pressure from civil society. States could equally have opted for a smaller number of supervisory bodies rather than the highly specialised architecture that exists today. This institutional expansion is itself part of the explanation for many of the challenges we now face.

The issue of resources provides a particularly striking illustration. I have just been informed by the current Vice-President of the Human Rights Committee that the Committee's annual sessions—which, during my own tenure, had already been reduced from five weeks to four, and subsequently to three—have now been cut to little more than a single short session, amounting to perhaps two or three weeks in total. This represents a reduction of approximately fifty per cent. Given the growing backlog of work and the realities on the ground, these developments are deeply concerning. Whenever these bodies engage in dialogue with states—and here they differ from the European Court of Human Rights, which benefits from its own supervisory machinery—states invariably express their support in principle, yet consistently resist proposals to increase budgets, staffing, or institutional capacity.

For these reasons, examining the internal functioning of international human rights bodies is every bit as important as discussing withdrawal. As this morning's panel

demonstrated, withdrawal may not be quite as widespread as it is sometimes portrayed. Nevertheless, its consequences remain significant, particularly where the withdrawal of major states leaves thousands of individuals without access to an international system of protection.

This panel will differ slightly from the previous one because we have the honour of welcoming the conference's keynote speaker, my dear colleague and friend Judge Ivana Jelić, Vice-President of the European Court of Human Rights and President of Section I. Judge Jelić will deliver the keynote address, touching, I expect, on many of the issues that have just been outlined, while naturally observing the constraints that accompany judicial office. Following her address, we will proceed to a discussion with our distinguished panellists, whom I will introduce shortly. Let me therefore first invite Judge Jelić to take the floor.

Keynote Speech: Migration, Sovereignty, and the Future of Human Rights Protection

Delivered by:
Professor Ivana Jelić,
Vice-President of the European Court of Human Rights and its Section I President

President of Marangopoulos Foundation for Human Rights, Professor Sicilianos, dear Alexandre,

Professor Pazarzis, dear Fej,

Governing Board Member of the Foundation, Dr. Kostopoulou, dear Andriani,

Distinguished colleagues, friends,

Ladies and gentlemen,

It is both a privilege and a timely responsibility to participate in this discussion on ***International Human Rights Bodies under Pressure***. The very title of this panel captures one of the defining constitutional tensions of our era: the tension between sovereign political authority and the universality of human rights protection.

We meet at a moment in which international human rights institutions are facing increasing contestation — not only from states openly hostile to international oversight, but also from states that remain formally committed to international human rights

frameworks while simultaneously seeking to recalibrate, narrow, or strategically reinterpret the scope of international obligations.

This development deserves careful attention because it reflects a deeper transformation in the relationship between law, politics, and multilateralism.

For decades after the Second World War, the legitimacy of international human rights institutions rested on a broad normative consensus: that certain rights transcend political contingencies and that international supervision constitutes not an intrusion into sovereignty, but rather a guarantee against its abuse.

Today, however, we are witnessing a gradual yet significant shift. Increasingly, the language of sovereignty is being mobilized not simply to defend constitutional pluralism or democratic diversity, but to challenge the interpretative authority of international courts and monitoring bodies themselves.

The issue before us is therefore not whether international human rights institutions will continue to exist. Formally, they undoubtedly will. The more important question is whether their authority, coherence, and transformative capacity will remain intact under sustained political and legal pressure.

One particularly important example concerns current debates surrounding Article 3 of the European Convention on Human Rights, especially in the context of migration.

Article 3 occupies a unique place within the Convention system. It embodies one of the clearest moral commitments of post-war Europe: the absolute prohibition of torture and inhuman or degrading treatment. Its absolute character has long represented a cornerstone of European public order.

Yet recent debates reveal growing efforts to reinterpret the practical reach of Article 3 in migration-related contexts. We increasingly hear arguments suggesting that evolutive interpretation should be deployed not to expand protection in response to contemporary realities, but rather to constrain it.

This is a remarkable inversion of the traditional understanding of evolutive interpretation.

Historically, the doctrine of the Convention as a “living instrument” served to ensure that rights remained practical and effective in changing social circumstances. It enabled the

Court to respond dynamically to developments in democratic standards, scientific knowledge, social realities, and emerging vulnerabilities.

Today, however, some actors invoke evolutionary interpretation in precisely the opposite direction — as a mechanism for restricting obligations considered politically or administratively burdensome.

This raises fundamental questions.

Can evolutive interpretation legitimately function as a tool for reducing levels of protection previously achieved?

What are the implications for legal certainty and the principle of effectiveness?

And perhaps most importantly, what happens to the moral authority of international human rights adjudication if fundamental guarantees become increasingly contingent upon political pressures of the moment?

Recent jurisprudence of the European Court of Human Rights illustrates particularly well the complexity of these tensions.

Perhaps one of the most emblematic judgments in this field remains ***Hirsi Jamaa and Others v. Italy***.

In that case, migrants intercepted by Italian authorities on the high seas were returned to Libya without any individualized assessment of their protection needs. The Court found violations of Article 3 of the Convention and reaffirmed that states cannot avoid their human rights obligations simply by acting outside their territorial borders.

The judgment was particularly important because it confirmed that migration control operations conducted extraterritorially may still engage Convention responsibility where a state exercises effective authority and control over individuals.

The Court also strongly reaffirmed the principle of non-refoulement as one of the essential guarantees of the Convention system. Even in situations of significant migratory pressure, states cannot expose individuals to a real risk of torture, inhuman treatment, or arbitrary onward removal.

In many respects, ***Hirsi Jamaa*** remains one of the clearest judicial affirmations that border protection cannot come at the expense of the absolute core of human dignity.

Equally significant is a landmark judgment in ***M.S.S. v. Belgium and Greece***, where the ECtHR ruled that both countries violated the Convention due to mistreating an Afghan asylum seeker and mishandling the transfer rules of Dublin Regulation.

There, the Court examined the transfer of an asylum seeker under the Dublin system and found that the applicant had been exposed to degrading detention and living conditions in Greece.

Importantly, the Court held that Belgium could not rely automatically or mechanically on the assumption that another European state would fully comply with fundamental rights obligations. The Grand Chamber, *inter alia*, concluded that there has been a violation of Article 3 of the Convention by Belgium because, by sending the asylum seeker back to Greece, the Belgian authorities exposed the applicant to risks linked to the deficiencies in the asylum procedure in that state.

This judgment was transformative because it demonstrated that the efficiency of migration governance cannot prevail over the effective protection of human dignity and individual rights.

The case also revealed a broader truth: systemic deficiencies within migration systems may themselves become human rights concerns of a structural nature.

At the same time, more recent cases such as ***N.D. and N.T. v. Spain*** reveal the increasingly complex and politically sensitive nature of migration adjudication before the Court (the GC decided that there has been no violation of Article 4 of Protocol No. 4 and art. 13 in conj. with art. 4/4).

The case concerned immediate returns at the Melilla border. The Grand Chamber placed considerable emphasis on the conduct of the applicants themselves and on the availability of lawful entry procedures.

The judgment generated extensive academic and institutional debate because many observers perceived it as reflecting a more deferential approach toward state migration-control measures.

Whether one agrees or disagrees with that interpretation, the case undeniably illustrates the growing pressures placed upon international courts when adjudicating politically charged migration disputes at the intersection of sovereignty, border security, and fundamental rights.

These tensions are perhaps nowhere more visible than in the increasingly difficult relationship between certain national governments and the European Court of Human Rights in the field of migration and asylum.

A particularly illustrative example is provided by recent cases concerning Denmark.

For many years, Denmark has pursued some of the most restrictive migration and asylum policies in Europe, often explicitly framed in terms of protecting national cohesion, democratic stability, and social sustainability.

This has inevitably generated friction with Strasbourg jurisprudence.

One especially important judgment was ***M.A. v. Denmark***, concerning family reunification for refugees.

The applicant, a Syrian refugee granted temporary protection status in Denmark, was prevented from obtaining family reunification for his wife because of a statutory three-year waiting period introduced under Danish law.

The Grand Chamber found a violation of Article 8 of the Convention, holding that such a rigid and generalized waiting period failed to strike a fair balance between the interests of the individual and those of the community as a whole.

What made the judgment particularly sensitive politically was that the Danish government had defended the measure as part of a broader strategy aimed at controlling migratory flows and preserving the capacity of the national asylum system.

The judgment triggered significant political reactions in Denmark and renewed criticism that the Strasbourg Court was interfering excessively in matters perceived as belonging to national democratic decision-making.

And yet, from the perspective of the Convention system, the judgment reaffirmed a fundamental principle: even in areas where states enjoy a certain margin of appreciation, migration-control policies cannot entirely neutralize individual human rights guarantees.

Another notable example is ***Savran v. Denmark***, concerning the expulsion of a foreign national suffering from severe mental illness.

The Grand Chamber held that deportation would NOT violate Article 3 because the threshold was not reached vis-a-vis real risk of serious and irreversible deterioration in his health condition due to the lack of adequate treatment in the receiving state. However,

the Grand Chamber established violation of art 8 regarding his private life. I wrote separate concurring opinion regarding the aspect of family life and notion of family in particular circumstances of the case.

The judgment generated substantial criticism in Danish political discourse because it was perceived by some as excessively limiting the state's ability to remove foreign nationals convicted of criminal offences.

In many respects, reactions to these judgments reveal a broader contemporary phenomenon.

The authority of international human rights courts is increasingly questioned not necessarily because states reject human rights as such, but because they contest who should ultimately define the limits of rights protection in politically sensitive areas such as migration, asylum, and national identity.

And this may ultimately become one of the central constitutional questions facing Europe today: whether international human rights supervision can remain effective in an era where democratic majorities increasingly demand greater national control over migration and border governance.

Recent jurisprudence concerning Italy further illustrates these tensions.

In ***S.S. and Others v. Italy***, concerning migrants intercepted in the Mediterranean following distress calls received by the Italian Maritime Rescue Coordination Centre, the applicants argued that Italy exercised sufficient control over the rescue operation to engage Convention responsibility for the subsequent actions of the Libyan coast guard.

The Court, however, approached the case primarily through the prism of jurisdiction under Article 1 of the Convention and concluded that Italy did not exercise the level of effective control necessary to establish extraterritorial jurisdiction in the circumstances of the case.

What is particularly significant here is not merely the outcome itself, but the broader institutional context in which such cases emerge.

The Court is increasingly confronted with situations where states seek to externalize migration management while simultaneously limiting the legal consequences of such externalization.

In that respect, the jurisprudence reveals a growing tension between functional models of state responsibility and traditional jurisdictional doctrines grounded in territorial control.

The case therefore demonstrates how migration governance increasingly tests the adaptability of the Convention system to contemporary forms of transnational state action.

At the same time, the Court has also reaffirmed, in other contexts, the absolute nature of Article 3 obligations.

For example, in ***J.A. and Others v. Italy***, concerning detention conditions in the Lampedusa hotspot, the Court found unanimously violations of Articles 3 and 5 of the Convention, and Article 4 of Protocol No. 4.

The Court emphasized that even significant migratory pressure on frontline states cannot justify treatment incompatible with human dignity.

Administrative difficulties, logistical burdens, or political sensitivities surrounding migration management cannot diminish the absolute character of protection against inhuman or degrading treatment.

That principle lies at the very heart of the Convention system.

Another particularly illustrative example is ECtHR Grand Chamber decision in ***Mansouri v. Italy***.

The case concerned a Tunisian national confined for several days on board a ship while awaiting removal from Italy.

The applicant complained under Articles 3, 5, and 13 of the Convention.

The Court ultimately declared the complaints inadmissible. Regarding Article 3, it held that although the applicant's confinement may have caused frustration and discomfort, the conditions had not reached the minimum level of severity necessary to constitute inhuman or degrading treatment within the meaning of the Convention.

What makes *Mansouri* especially important in the context of our discussion is that it demonstrates the Court's careful effort to preserve both the authority and the coherence of Article 3 jurisprudence by maintaining a clear threshold of severity even amidst politically sensitive migration disputes.

This reflects a broader institutional reality.

International courts today are increasingly aware not only of the need to protect rights, but also of the importance of preserving the legitimacy and consistency of the interpretative framework itself.

These questions extend well beyond migration law.

Recent cases concerning Belgium further demonstrate the structural pressures currently affecting the European human rights system in the migration context.

In ***Camara v. Belgium***, decided on 18 July 2023, the Court examined the situation of an asylum seeker who had been left homeless for several months despite domestic judicial decisions ordering the Belgian authorities to provide accommodation and material assistance.

The Court found violation of article 6 of the Convention (and dismissed the complaints under article 3), emphasizing not only the degrading nature of the applicant's living conditions, but also the failure of the authorities to comply effectively with binding domestic court decisions.

The judgment is particularly significant because it illustrates that systemic deficiencies in reception systems may themselves amount to degrading treatment under the Convention.

It also demonstrates that the effectiveness of human rights protection ultimately depends not only on judicial recognition of rights, but also on the practical capacity and willingness of states to implement them.

Equally important is case ***M.A. v. Belgium***, decided on 27 October 2020.

The case concerned a Sudanese national removed by the Belgian authorities despite pending proceedings and allegations that he faced a real risk of ill-treatment upon return to Sudan.

The Court found violations of Article 3 in its procedural dimension, as well as Article 13 in conjunction with Article 3, holding that the Belgian authorities had failed to conduct a sufficiently rigorous assessment of the risks faced by the applicant and had not ensured access to an effective remedy capable of suspending the removal measure.

The judgment strongly reaffirmed the **principle of non-refoulement** and emphasized once again that migration-control policies cannot override the procedural safeguards necessary for the effective protection of fundamental rights.

Taken together, these cases reveal that some of the greatest contemporary challenges for the Convention system do not arise solely from open resistance to human rights norms, but also from systemic administrative failures, implementation deficits, and increasing tensions between legal obligations and political pressures surrounding migration governance.

Across multiple jurisdictions and institutions, we observe an expanding reliance on limitation and restriction clauses for purposes arguably extending beyond those originally contemplated by human rights instruments.

Concepts such as national security, public order, social cohesion, migration management, or democratic resilience are increasingly invoked in ways that risk normalizing exceptionalism.

Of course, international human rights law has never denied the legitimacy of balancing exercises. Democratic societies require them. The Convention system itself contains carefully constructed mechanisms allowing for restrictions under specific conditions.

But what is at stake today is not merely balancing. It is the possibility of conceptual transformation: the gradual reconfiguration of exception into norm.

And history teaches us that human rights systems are rarely weakened through abrupt collapse. More often, they erode incrementally — through reinterpretation, selective compliance, political delegitimization, and the normalization of narrower readings of protection.

This is why the jurisprudence under Article 18 of the Convention has become increasingly significant.

Article 18 occupies a particularly sensitive place within the Convention architecture because it addresses situations in which restrictions formally permitted under the Convention are pursued for ulterior purposes.

Its growing prominence reflects a broader institutional reality: contemporary threats to human rights protection do not always manifest through explicit rejection of legal

obligations. More frequently, they emerge through instrumentalization of legal mechanisms themselves.

In other words, the challenge is no longer only illegality. It is the strategic use of legality.

And this phenomenon places international courts in an exceptionally delicate position.

On the one hand, courts must remain faithful to legal principle and preserve the integrity of rights protection. On the other hand, they operate within a political environment characterized by polarization, geopolitical fragmentation, crisis of the rule of law, democratic backsliding, and growing skepticism toward supranational adjudication.

This creates a difficult institutional dilemma.

If courts respond too cautiously, they risk gradual erosion of rights and institutional relevance.

If they respond too aggressively, they risk accusations of judicial overreach and democratic illegitimacy.

The resilience of international human rights bodies therefore depends not only on legal doctrine, but also on institutional credibility, methodological coherence, and the capacity to maintain public trust.

And perhaps this is the central challenge before us.

International human rights institutions derive their authority neither from military power nor from direct democratic mandate. Their authority ultimately rests on legitimacy — on the persuasiveness of legal reasoning, consistency of principles, and confidence that rights are protected impartially and universally.

For that reason, coherence matters enormously.

Selective interpretation, fluctuating standards, or overt politicization risk weakening the very foundations upon which international adjudication depends.

At the same time, we should resist overly simplistic narratives of institutional crisis.

The current moment is undoubtedly difficult, but contestation is not necessarily evidence of failure. In many respects, pressure upon international human rights institutions reflects their continuing relevance.

Human rights courts and monitoring bodies remain influential precisely because their decisions matter politically, socially, and symbolically.

The essential task, therefore, is not to insulate these institutions from all criticism. Critique is inherent to democratic legality.

Rather, the challenge is to preserve conditions under which principled adjudication remains possible despite political contestation.

That requires morality from states regarding the nature of their commitments.

It requires methodological discipline from courts.

It requires continued engagement from civil society and academia.

And it requires recognition that the long-term stability of democratic societies ultimately depends not on weakening human rights guarantees during periods of political pressure, but on preserving them precisely in such moments.

The post-war human rights architecture was built upon the recognition that fear, insecurity, and political crisis often generate the greatest risks to human dignity.

That insight remains as relevant today as it was when the Convention system was created.

The question confronting us now is whether international human rights institutions, including the Strasbourg Court and the UN Human Rights Treaty Bodies, can continue to uphold that vision under increasingly adverse political conditions.

Their future authority will depend not only on legal texts, but on collective willingness — among judges, scholars, governments, and societies — to defend the idea that human rights protection must remain principled, universal, and resistant to the shifting pressures of political expediency.

Dear All, thank you for your attention.

Panel Discussion

Professor Pazartzis: Thank you very much, Judge Jelić. That was an excellent keynote address and a fitting introduction to the discussion that follows. You have already touched upon many of the issues we shall be exploring during this panel.

Allow me now briefly to introduce our panellists. To my far right is Professor Natasa Mavronicola, Professor of Human Rights Law at the University of Birmingham, whose teaching and research focus on human rights law, criminal justice, and public law, with particular emphasis on the jurisprudence of the European Court of Human Rights. To my left is Professor Maria-Daniella Marouda, Associate Professor of International Law and Humanitarian Law at Panteion University, who has served as Vice-Chair and subsequently Chair of the European Commission against Racism and Intolerance (ECRI) until 2025. Finally, again to my far right, is Dr Aikaterini (Katerina) Tsampi, Assistant Professor of International Law at the University of Groningen and a distinguished scholar of international human rights law, who also followed closely the work of the Human Rights Committee during her doctoral research. It is a pleasure to welcome you all.

Before we begin, let me note that any comments or questions addressed specifically to Judge Jelić will be taken together at the end of the panel. We shall now proceed to our first round of questions.

Round One

When Naming and Shaming Fails: How Monitoring Bodies Can Bounce Back

Professor Pazartzis: One of the principal ways in which international human rights mechanisms seek to influence state behaviour is through "naming and shaming"—an approach that has long been championed by human rights advocates and civil society organisations. Yet it is far from clear that this strategy is always effective. Indeed, one might even ask whether it has, in some instances, contributed to the backlash we are witnessing today. Professor Marouda, can international human rights monitoring bodies recover when naming and shaming ceases to be effective? Are there alternative approaches capable of encouraging gradual compliance before issues ultimately reach judicial determination?

Professor Maria-Daniella Marouda: Thank you very much. It is both an honour and a pleasure to participate in this conference and to contribute to this second panel.

To answer your question directly, the traditional naming-and-shaming model was never designed to operate under adversarial conditions. Rather, it was conceived as a form of supranational monitoring grounded in cooperation and dialogue, built on the assumption that states generally intend to comply with international law and their human rights

obligations, provided they possess the necessary capacity to do so. That assumption constitutes the normative foundation upon which the system was constructed.

Allow me to structure my remarks around two principal threats currently confronting monitoring bodies, one positive counter-example, and finally three suggestions as to how these institutions might regain their effectiveness.

Before turning to these points, it is useful to recall what monitoring bodies actually produce. Their work typically consists of periodic country reports, usually issued every five years, annual reports summarizing their activities, press releases—although not invariably—and general policy recommendations, comparable in some respects to general comments, distilled from their accumulated monitoring practice. The real question is not whether these outputs are well prepared, but how they are subsequently received and used by states and other actors.

The first threat arises when monitoring findings are selectively appropriated by external actors. A carefully qualified report may be removed from its legal and factual context and presented as proof of a much broader political narrative. I would describe this as the instrumentalisation—or, in its most extreme form, the weaponisation—of monitoring.

A useful illustration is provided by the Advisory Committee's Fourth Opinion on Latvia under the Framework Convention for the Protection of National Minorities, published in February 2024. The Opinion presented a careful and balanced assessment. It fully acknowledged Latvia's legitimate security concerns following Russia's aggression against Ukraine, while concluding that measures restricting access to minority-language education were not in conformity with Latvia's obligations under the Framework Convention.

The Opinion was particularly attentive to the danger of political misuse. It expressly recalled Article 21 of the Framework Convention and emphasised that its assessments could not be interpreted as authorising conduct contrary to the sovereign equality, territorial integrity or political independence of states.

The Latvian Government nevertheless reacted sharply, arguing that the Advisory Committee "does not understand, or does not want to understand, the historical situation of Latvia." From a political perspective, that reaction may be understood in the context of Latvia's history and legitimate security concerns. The more troubling development, however, occurred elsewhere.

Within days of publication, the Opinion was being presented in Kremlin-aligned media as evidence of a much broader campaign against Russian-speaking minorities—an allegation that went far beyond the language and conclusions of the Opinion itself. A carefully qualified and legally reasoned assessment was thus stripped of its context and incorporated into a political narrative that the monitoring body had expressly sought to exclude. The body had performed its mandate responsibly; nevertheless, its findings were weaponised.

The difficulty, therefore, was not that the monitoring body had abandoned neutrality. It was that a balanced assessment could be selectively appropriated and made to support something that the Opinion itself did not say. This creates a genuine institutional dilemma: monitoring bodies must remain independent, consistent and faithful to their findings, while also anticipating—and responding clearly to—the foreseeable misuse of their work.

The second threat is, in my view, even more troubling because it originates from within the institutional system itself. Here the difficulty lies not merely in governmental criticism, but in the failure of institutions to defend their own work.

ECRI's Sixth Report on Italy, published in October 2024, provides an instructive example. The report carefully documented concerns regarding hate speech in political discourse, racial profiling by law enforcement authorities, and pressures affecting judicial independence in migration-related cases, while setting out fifteen evidence-based recommendations.

The Italian Government did not respond through engagement but through outright rejection. The Prime Minister described the report as "shameful" and the product of ideological prejudice. The Deputy Prime Minister dismissed ECRI as a useless institution financed by Italian taxpayers, while the Minister of the Interior went even further, publicly characterising the Council of Europe itself as harmful. All of these statements were made within hours of the report's publication.

The effect was immediate. Before journalists, parliamentarians, civil society organisations or the wider public had an opportunity to engage with the substance of the report, its findings had already been portrayed as fundamentally illegitimate. The authority of the monitoring body was therefore placed in question before any meaningful discussion of its findings could begin.

The controversy did not quickly disappear. Several months later, during the presentation of ECRI's annual report in Brussels (*nota bene*: annual reports do not mention specific countries, only trends) a journalist returned to the Italian report. This demonstrated how political reactions to an individual country report can continue to shape the wider public reception of a monitoring body's work.

The episode raised a broader institutional question: namely, whether international monitoring bodies operating in a politically hostile communication environment should adapt the way they present their findings publicly — and whether, when the visibility of a monitoring body's work is reduced in the wake of strong political criticism, this risks creating the perception that pressure has succeeded, even where no such intention exists."

The implications are difficult to ignore. In an environment marked by acute political polarisation and the deliberate instrumentalisation or even weaponisation of monitoring outputs, there is a genuine danger that experts and institutions alike begin internalising political constraints before they are formally imposed—softening findings, qualifying conclusions, or moderating public communications not because the evidence warrants it, but in order to pre-empt backlash. This form of gradual self-restraint is particularly insidious precisely because it is invisible: it leaves no formal record of what was omitted or softened, and it may ultimately do more damage to the credibility of the monitoring system than any government attack ever could.

Human rights institutions must consider not only how monitoring findings are produced, but also how the independence of the monitoring process, the integrity of its findings and their public accessibility can be preserved when they are politically contested. Institutional communication is not external to monitoring; it is one of the conditions of its effectiveness.

Fortunately, there are more encouraging examples.

ECRI's Sixth Reports on Sweden, published in June 2025, and on the Netherlands, published in March 2026, were issued during politically sensitive periods in both countries. Sweden was navigating a significant shift in its governing coalition, while the Netherlands was operating under a government that included parties with openly nationalist platforms. Each identified serious shortcomings, including rising hate speech in political discourse, risks of racial profiling and structural discrimination. Yet neither government reacted as Italy had done — and the reason, I would argue, lies less in governmental disposition than in the nature of the civil society and parliamentary ecosystems into which the reports landed. In both countries, civil society organisations,

opposition parliamentarians, equality bodies and human rights defenders were alert—divided in their assessments, but aware that the ECRI report could serve as an instrument to contest backsliding and to anchor domestic debate in an external standard with legal and reputational weight. The reports were taken up by political and civil society allies who knew how to use them. They were received in prepared ecosystems.

In the Netherlands, the Government followed established constitutional practice: within thirteen days of the report's publication, the responsible Minister formally transmitted it to the Tweede Kamer—the lower house of Parliament—accompanied by a ministerial covering letter and a beslisnota, a background policy note for ministerial decision-making, prepared in advance of the report's formal release. This meant that the government had already begun internally processing the report's implications before it reached the public domain. The contrast with a pre-emptive dismissal could hardly be sharper: here, the constitutional machinery of parliamentary accountability was activated as a matter of course. Civil society organisations and specialist networks similarly engaged with the findings as working material for advocacy, public debate and litigation—among them networks active on hate speech and anti-discrimination that had themselves contributed information during the monitoring process. Rather than being dismissed as a political attack, the report functioned precisely as monitoring mechanisms are intended to function: as a catalyst for dialogue, accountability and the prevention of further backsliding.

The critical difference lay not in the quality of the reports—which are consistently rigorous—but in the institutional and societal ecosystem surrounding them. Effective parliamentary scrutiny, an engaged civil society and a willingness to treat monitoring findings as constructive policy instruments determine whether these reports fulfil their intended purpose. In my view, this offers an important lesson not only for monitoring bodies but also for the European Court of Human Rights itself.

Allow me to conclude with three practical suggestions.

First, greater investment should be made not only in the preparation of monitoring reports but also in strategies for ensuring that they are effectively disseminated and used in cooperation with domestic actors.

Second, engagement with governments should not occur only once every five years through the reporting cycle. Regular round tables, follow-up meetings and national discussions should maintain an ongoing dialogue so that monitoring recommendations

remain part of the domestic policy agenda rather than lying dormant between reporting cycles.

Third, institutions should recognise the indispensable role played by independent experts. Individual experts are often prepared to defend monitoring findings publicly when institutions themselves are reluctant to do so. Their contribution should therefore be viewed as an integral component of the monitoring system rather than merely a supplementary one.

Thank you.

The Chişinău Declaration and the Absolute character of Article 3

Professor Pazartzis: Maintaining meaningful engagement with governments, even through follow-up procedures, inevitably requires resources that international bodies do not always possess. Professor Mavronicola, I would like to turn to a related, but distinct, issue: migration and Article 3 of the European Convention on Human Rights. In your earlier work on the draft of what ultimately became the Chişinău Declaration, you argued that both its framing and the manner in which states sought to reshape the debate risked undermining the absolute nature of Article 3. The final Declaration, adopted on 15 May, expressly reaffirms that Article 3 is absolute. Nevertheless, do you consider that it still undermines that principle? How do you assess the final text?

Professor Natasa Mavronicola: Thank you very much. It is a great pleasure to participate in this panel, and I would also like to thank the organisers for bringing us together for what has already been an excellent conference. This also happens to be my first day back from maternity leave, so I am particularly delighted to spend it here—especially, I should add, in Judge Jelić's company. I suspect that some of my remarks will echo themes already touched upon in her keynote address.

Allow me to begin with a brief autobiographical observation. The so-called letter of the nine was published on the very day my daughter was born—22 May 2025. Since then, we have witnessed a sequence of developments: the statement of the twenty-seven of 10 December 2025, followed by the Chişinău Declaration of 15 May 2026. Although the Declaration is a political instrument without immediate binding legal effect, it nonetheless carries potentially significant implications for the future development of the Convention system.

It has been suggested that the final text is more restrained than earlier drafts and, indeed, I agree that it could have been considerably more problematic. Nevertheless, in response to your question, my answer remains yes: despite its express reaffirmation that Article 3 is absolute, the Declaration conveys a number of messages that, in my view, undermine both the integrity of Article 3 and its absolute character.

The Declaration begins by affirming that the prohibition of torture and of inhuman or degrading treatment or punishment under Article 3 is absolute. As the Declaration itself recognises, the prohibition permits no derogation and contains none of the express limitations found elsewhere in the Convention, such as those applicable under Article 8. Consequently, Article 3 allows for no legitimate interference.

The concept of absoluteness, however, deserves closer attention. It entails unconditional protection: the guarantees afforded by Article 3 cannot be displaced or diminished because of the conduct, character, or perceived undesirability of the individual concerned. If Article 3 is genuinely absolute—as both the Declaration and the Court's jurisprudence repeatedly affirm—its interpretation must likewise remain unconditional. The scope of the prohibition cannot legitimately be defined by reference to the desirability of the consequences that compliance may produce, nor can qualifications or balancing exercises be introduced indirectly through interpretation.

Against that background, I believe that several elements of the Declaration sit uneasily with its opening affirmation of absoluteness.

First, the Declaration explicitly invokes the practical consequences of Article 3 protection when discussing the scope of the right itself. It states that "the minimum level of severity of ill-treatment that constitutes inhuman or degrading treatment or punishment must … remain high … avoiding unnecessary constraints on decisions to extradite or to expel foreign nationals." The implication is clear: Article 3 should be interpreted in a manner that minimises obstacles to expulsion and extradition. The Declaration proceeds further by suggesting that domestic authorities and courts should exercise particular caution when applying the Court's Article 3 jurisprudence in removal cases involving destination states that are not parties to the Convention.

In my view, this reflects a fundamentally relativist approach that is difficult to reconcile with the absolute nature of Article 3. It implies that a Contracting State's obligations under the Convention should somehow be relaxed because the receiving State is not itself bound by the Convention, notwithstanding that it is the sending State which is bound by the Convention and whose conduct is under review.

Secondly, the Declaration advances what I regard as a distinctly minimalist conception of both the substantive scope of Article 3 and the obligations flowing from it. It insists that the minimum threshold of severity "must remain high" precisely because Article 3 is absolute, thereby suggesting that the scope of an absolute right should necessarily remain narrow.

Read charitably, this position may reflect the mistaken assumption that conduct serious enough to violate an absolute prohibition must necessarily be exceptional or infrequent. Yet a substantial body of multidisciplinary scholarship—covering subjects ranging from interrogational torture to gender-based violence—demonstrates that torture and inhuman or degrading treatment may simultaneously be widespread and extremely severe.

A less charitable, though perhaps more plausible, explanation is that states naturally prefer the Article 3 threshold to remain as high as possible because it establishes the point beyond which state conduct becomes conclusively unlawful. Raising that threshold inevitably creates greater latitude for pursuing what the Declaration itself describes as "new approaches to addressing and potentially deterring irregular migration."

The Declaration also adopts what I would describe as a minimalist approach to compliance. It repeatedly calls upon the Court to provide further "guidance". Yet both the text of the Declaration and its wider political context suggest that this guidance is sought not in order to strengthen protection against the harms prohibited by Article 3, but rather to maximise the scope for state action approaching the limits of those protections.

This tendency is reinforced by the Declaration's endorsement of a well-known—and, I would suggest, much criticised—statement in the Court's jurisprudence to the effect that a finding of an Article 3 violation will rarely arise where an applicant is to be expelled or extradited to "a state which had a long history of respect for democracy, human rights, and the rule of law."

I should perhaps acknowledge my own involvement in that criticism, having argued against the dictum when it first appeared. Interestingly, the Court itself has not meaningfully relied upon this formulation in more recent case law, following the extensive academic criticism directed towards the two cases in which it appeared in 2012.

Its reappearance in the Chişinău Declaration therefore raises important questions about how states envisage operationalising the concept of "presumptively safe" countries. In

particular, it calls into question what becomes of the requirement for an individualised assessment once a genuine Article 3 claim has been raised.

There is, moreover, a striking historical irony. The dictum originally emerged in relation to the United States at precisely the time when the international community was coming to terms with the scale of the extraordinary rendition programme and the systematic use of torture in the aftermath of 11 September. That context makes its revival in the Declaration all the more significant.

These are only some of the concerns I have regarding the Chişinău Declaration. In my view, it raises serious questions about the integrity of Article 3 and, more fundamentally, about the preservation of its absolute character.

Thank you.

Article 18: Doctrinal Maturation or Catch-All Provision?

Professor Pazartzis: Thank you for setting the scene so clearly. I suspect the ball will soon be back in the Court's hands. Let me now turn to Professor Tsampi and to a topic you have written about extensively: Article 18 of the Convention. For many years it remained largely dormant, yet the Court's recent case law has been viewed as marking a process of doctrinal maturation that has finally given meaningful effect to the provision. Looking ahead, particularly in light of growing rule-of-law concerns across Europe, where do you see the future of Article 18?

Dr Aikaterini (Katerina) Tsampi: Thank you very much. Let me begin by thanking the Marangopoulos Foundation for the invitation. It is a great honour to participate in this conference alongside so many distinguished scholars and practitioners in international law and human rights, and I would also like to congratulate the organisers on what has been an impeccably organised event.

Speaking of impeccable, let us turn to Article 18.

The Court's Article 18 jurisprudence represents one of the most dramatic—if I may borrow this term, given that we are in Greece—jurisprudential developments in contemporary international human rights law. The central question, which was already implicit in Judge Jelić's keynote address, is whether this development reflects genuine doctrinal maturation or whether Article 18 risks evolving into a catch-all provision for systemic rule-of-law concerns extending beyond the Convention's original design. I do not believe there is a straightforward answer, but let me attempt to unpack the issue.

Article 18 occupies a rather unusual place within the Convention. Although it appears in Section I, alongside the substantive rights and freedoms, it does not itself establish an autonomous right. Rather, it functions as a meta-provision. Even where an interference with a Convention right formally satisfies the requirements of the relevant substantive provision, Article 18 may nonetheless be violated, read in conjunction with that provision, where the restriction pursues an illegitimate purpose. In this sense, Article 18 operates as a limitation upon permissible limitations.

As the Court itself has recognised, the provision draws its intellectual origins from the French administrative law doctrine of *détournement de pouvoir*. Put somewhat schematically, although the Convention principally adopted the British model of specific limitation clauses, the French legal tradition also found expression through this general prohibition on the misuse of public powers.

For many years, as has already been noted today, Article 18 remained largely dormant. Its modern revival began almost exactly a decade ago with the Grand Chamber judgment in *Merabishvili v. Georgia*. That judgment clarified both the evidentiary requirements applicable to Article 18 and the analytical framework governing such claims. Equally importantly, it rejected the previously prevailing perception that Article 18 was merely symbolic, exceptional, or effectively absorbed into the interpretation of other Convention provisions.

Subsequent judgments have found violations where restrictions on Convention rights concealed improper governmental purposes directed against opposition politicians, journalists, civil society actors and, notably, even members of the families of prominent activists. In many respects, therefore, we are witnessing the long-overdue activation of a provision that had remained dormant for decades.

The remaining concern is whether Article 18 risks evolving into a broader vehicle for systemic rule-of-law critique, particularly in politically sensitive cases where violations of other Convention provisions—such as Articles 5, 10 or 11—have already been established.

Two concerns arise in this regard.

The first relates to evidence. Article 18 necessarily depends upon circumstantial evidence, and the Court increasingly relies upon contextual evidence in establishing improper purpose. While such an approach is understandable, it also raises the possibility that the judicial assessment may gradually move closer to broader political evaluation.

The second concern is institutional. The Convention system was designed principally to determine individual applications. One may therefore ask whether Article 18 is gradually transforming the Court into an institution that evaluates the overall health of national systems of governance, rather than adjudicating individual violations alone.

I do not believe there is an easy answer to these questions. At the same time, I would hesitate to regard this increasing contextualisation as presenting only risks for the Court. It may equally represent an opportunity to address more effectively the structural causes of democratic backsliding and rule-of-law deterioration.

A balanced assessment would therefore suggest that the Court's recent Article 18 jurisprudence reflects neither pure doctrinal maturation nor an uncontrolled expansion of judicial authority. Rather, it demonstrates the Court's effort to respond to evolving patterns of democratic erosion while maintaining the doctrinal discipline necessary for judicial legitimacy.

I am reminded of an observation made by Professor Coussirat-Coustère writing in 1999, at a time when Article 18 attracted remarkably little academic attention. He described it as a provision that "we keep just in case."

It may well be that we have now reached precisely that case.

Thank you.

Round Two

Strategic Prioritisation in an Age of Atrocity

Professor Pazartzis: We are increasingly confronted with situations that extend well beyond what might be described as ordinary human rights violations. International human rights bodies now find themselves operating in contexts marked by atrocity, mass violence and armed conflict, raising new and particularly difficult challenges. Professor Marouda, can monitoring bodies and mechanisms engage in any meaningful form of strategic prioritisation when responding to atrocities, even though they were not originally designed for that purpose?

Professor Marouda: Philip Alston has written compellingly about the challenge that atrocity situations present for the international human rights system. When violations become widespread or systematic, or occur in the context of armed conflict and may also engage international criminal law, the problem is not simply one of greater scale. It is also

methodological. How should a monitoring body designed to examine ordinary patterns of compliance respond when confronted with atrocity?

Ordinarily, monitoring bodies are tasked with documenting matters such as legislation, policing practices, restrictions on minority languages, violence against particular groups, or deficiencies in judicial independence. Their methodologies were developed for precisely those purposes; they were never designed for atrocity situations. Yet we are now confronted with contexts in which racial profiling constitutes a human rights violation, while the deportation of children may amount to a crime against humanity. How can both phenomena realistically be accommodated within the same monitoring framework?

Several Council of Europe monitoring bodies have been called upon to consider how their established mandates and methods apply in relation to Ukraine and other situations of acute crisis. At the same time, the Council of Europe has developed new accountability mechanisms, including the Register of Damage for Ukraine. Monitoring bodies and accountability mechanisms perform different functions, but these developments raise a common institutional question: can procedures designed for ordinary conditions respond adequately when grave violations are unfolding in real time?

Ordinarily, country monitoring operates through predetermined multi-year cycles intended to ensure continuity, predictability and equal treatment among states. These safeguards remain important. Yet what should happen when an atrocity situation develops between two scheduled monitoring cycles? Should the system possess a limited capacity to respond? If so, who should determine the priorities, and according to what criteria?

Allow me to suggest three possible approaches.

First, monitoring bodies could supplement—but not replace—their regular cycles with a principle of triage based on gravity. Periodic country visits should continue according to established procedures. However, urgent opinions, interim statements or exceptional procedures could be activated where the gravity and urgency of the situation require a more immediate response.

Such prioritisation should not depend on political visibility alone. It should be governed by transparent criteria, including the seriousness and scale of the alleged violations, the vulnerability of those affected, the risk of irreversible harm, the urgency of preserving reliable information and the absence of other effective monitoring mechanisms. Any

exceptional response must, of course, remain within the body's mandate and preserve its independence and methodological standards.

This approach is not without precedent. The Venice Commission of the Council of Europe has, in practice, demonstrated an ability to respond rapidly to situations of exceptional urgency, and this has significantly enhanced both its visibility and its practical impact. I believe that a similar model should be considered more broadly across international monitoring mechanisms, provided that the necessary institutional resources are made available.

Secondly, we should distinguish more clearly between the documentation function and the compliance function of monitoring bodies. In situations of atrocity crimes, the immediate objective is unlikely to be securing state compliance. A state engaged in atrocities is unlikely to respond constructively to recommendations framed in the language of ordinary human rights monitoring. Rather, the realistic objective becomes the systematic collection and preservation of evidence.

Indeed, this is increasingly how monitoring findings are used in practice. International criminal tribunals, *ad hoc* accountability mechanisms and domestic courts dealing with atrocity-related crimes routinely rely upon monitoring reports documenting patterns of conduct, chains of command and the systematic targeting of civilian populations. What monitoring bodies record today during country visits may ultimately become essential evidence in future accountability proceedings. That function alone gives their work considerable significance.

Thirdly, while prioritising atrocity situations may be necessary, monitoring bodies must also guard against political instrumentalisation operating in the opposite direction. The danger is that strategic prioritisation may become geopolitically selective, with certain crises receiving sustained attention while others are neglected for political reasons. Avoiding that outcome requires transparent and methodologically sound criteria for prioritisation. Monitoring bodies should neither focus on particular situations merely because they are geopolitically salient nor avoid others out of concern that certain governments may react adversely.

Only by maintaining methodological consistency and institutional independence can monitoring bodies continue to perform their functions effectively while adapting to the realities of contemporary conflicts.

Thank you.

The Living Instrument in Reverse

Professor Pazartzis: We have heard about the margin of appreciation and the living instrument doctrine, interpreted in different ways. There is an emerging argument that the living instrument doctrine may not necessarily lead only to progressive developments; rather, some states now contend that interpretation in light of present-day conditions may justify more restrictive readings of Convention rights in order to reflect contemporary public concerns. Professor Mavronicola, how do you respond to that argument?

Professor Mavronicola: Thank you. Let me begin by saying that I very much appreciated Professor Marouda's earlier use of the term *weaponisation*. I find it genuinely fascinating that a doctrine originally developed to ensure the effective protection of human rights in new, previously unrecognised or insufficiently recognised contexts, is now itself being invoked as a means of containing, limiting, or even reversing those very protections.

What is particularly striking is that this argument is no longer directed simply against the European Court of Human Rights from the outside. Increasingly, states are urging the Court itself to employ the living instrument doctrine in a regressive manner—to reinterpret rights more restrictively in order to accommodate contemporary political concerns. This represents something qualitatively different from the more familiar criticism of the doctrine as an instance of judicial activism, mission creep, or, to borrow John Finnis's expression, a "usurpation of power" through progressive interpretation of the Convention.

Allow me to return once again to the Chișinău Declaration, in relation to which, as I have already indicated, I have a number of concerns—not only because it somewhat disrupted my maternity leave, but because it brings precisely this issue to the forefront. The Declaration states that "the Convention is a living instrument. It is interpreted in the light of present-day realities and remains applicable in response to novel challenges. It does not operate in a vacuum: when assessing the compliance of state authorities with their obligations, the concrete context in which they act forms part of the overall assessment required under the Convention." That phrase is, of course, immediately recognisable to anyone familiar with the Court's jurisprudence. What is new, however, is the manner in which the doctrine is subsequently deployed.

The implication is that the living instrument doctrine should permit not only the prospect of expansion in the authoritative delimitation of the substantive scope of rights in

response to changing social conditions, but also their restriction where contemporary political circumstances are said to warrant a more cautious approach. In other words, the doctrine is presented as capable of operating in both directions: progressively and regressively.

This raises a number of important questions.

The first concerns the relationship between evolutive interpretation and European consensus, together with the different—and at times competing—understandings of consensus as a basis for interpreting the Convention dynamically.

The second concerns whether international human rights law recognises any principle of non-regression in interpretation, particularly in relation to consensus.

I raise the question of consensus with some hesitation, given the distinguished authorities on the subject present in this room. Nevertheless, I believe the issue is already implicit in the judgment that first articulated the living instrument doctrine, *Tyrer v. United Kingdom*. In concluding that judicial corporal punishment constituted degrading treatment, the Court observed that it had been "influenced by the developments and commonly accepted standards in the penal policy of the member States of the Council of Europe in this field." At the same time, however, the Court rejected the argument that local public opinion favouring corporal punishment should be decisive. Implicitly, it recognised that popular support for a particular practice may itself stem from the very attitudes that make the practice degrading.

That, in my view, exposes one of the central difficulties. A transnational consensus—or convergence—may itself reflect problematic underlying political dynamics. Consensus cannot automatically be equated with legitimacy. States may converge around policies that disadvantage unpopular or marginalised groups precisely because those groups lack political influence or political support.

Accordingly, important questions remain regarding the relationship between the living instrument doctrine and consensus, as well as the extent to which the doctrine should respond to changing patterns of agreement or disagreement among states.

This also requires us to ask what we actually mean by "consensus". Rarely does the Court identify complete unanimity. More often, it refers to a discernible trend or convergence. But a trend in what, exactly?

Here I would highlight a growing tension between two different forms of evidence upon which the Court has traditionally relied. On the one hand are domestic political and legislative developments across the Contracting States. On the other are developments within international and transnational human rights law, including the work of international monitoring bodies and other human rights institutions.

Increasingly, these two forms of evidence may point in different directions. We appear to be witnessing a widening gap between certain domestic political trends and the broader trajectory of international human rights law upon which the Court has historically relied when applying the living instrument doctrine.

What, then, should happen when states seek to invoke the doctrine itself in support of a more restrictive interpretation of Convention rights?

This, in turn, raises a further question: might there exist a principle of non-regression—at least with respect to certain Convention rights—that limits the extent to which the living instrument doctrine can legitimately be employed to reduce previously recognised levels of protection?

Ultimately, the issue may be framed in relatively simple terms. Can a regressive consensus—or, more accurately, a regressive trend in state law and practice—compel a corresponding regressive reinterpretation of Convention rights through the living instrument doctrine?

I believe that this is one of the most significant questions currently confronting the Court.

I shall leave it there.

Article 18 and the Risk of Backlash

Professor Pazartzis: I will turn back to Professor Tsampi to consider Article 18 from a different perspective. This line of jurisprudence emerged as a response to abuses of power. Given the increasing political contestation surrounding it, might it also generate backlash against the Court itself, from states seeking to resist or challenge this jurisprudence, along the lines Judge Jelić referred to earlier?

Dr Tsampi: Thank you. I certainly would not wish to be in the Court's position when answering that question. Allow me instead to begin by setting the broader context.

To date, the Court has found a violation of Article 18 in only thirty-four cases. There are many experts in this room who may correct me if my figures are inaccurate, but I believe

that Article 18, together with Article 16, remains among the least frequently invoked provisions in Section I of the Convention.

The geographical distribution of these cases is equally revealing. Findings of Article 18 violations concern Azerbaijan, Russia, Türkiye, Ukraine, Georgia and Moldova—what might fairly be described as Europe's principal rule-of-law stress zones. Interestingly, if one traces the history of Article 18 jurisprudence, one encounters a Dutch case from 1974. No violation was found there, of course, but it was in that case that the former European Commission of Human Rights first articulated the foundational doctrinal standards governing Article 18. It remains unique in that respect. Since then, no Western or Central European state has been found to have violated Article 18.

This is significant because Article 18 violations carry a distinctive legal and symbolic meaning. The provision inherits something from its French administrative law origins in the doctrine of *détournement de pouvoir*: it denotes not merely an error in the exercise of public authority, but a particularly scandalous violation of law. Consequently, a finding of a violation under Article 18 carries political and symbolic weight extending well beyond the individual case.

There is also a practical dimension. Article 18 jurisprudence is closely connected to the enforcement challenges arising under Article 46 of the Convention. At present, the two infringement proceedings pending before the Committee of Ministers—against Azerbaijan and against Türkiye—both concern judgments that include findings of Article 18 violations. That connection is not coincidental.

This brings us to the central question: what role should Article 18 ultimately perform within the Convention system? Should it remain a narrowly confined and exceptional signal of abuse, or should it evolve into a broader diagnostic tool capable of identifying systemic rule-of-law deterioration at an early stage?

Rather than offering my own answer straightaway, allow me to conclude by recalling the words of someone who, I believe, anticipated this dilemma long before it emerged in the Court's jurisprudence. I shall not identify the author immediately, although I suspect many of you will recognise the quotation:

> "An honest man does not become a gangster in twenty-four hours. When an honest man suddenly does something very wicked, it means that he has long been corrupted by evil … Democracies do not become Nazi countries in one

> day. Evil progresses cunningly, with a minority operating, as it were, to remove the levers of control."

Those words were pronounced in 1949 by Pierre-Henri Teitgen, one of the principal architects of the European Convention on Human Rights. Their relevance today is striking. No individual—and no state—is immune from democratic or rule-of-law backsliding.

For that reason, the fundamental systemic question may not ultimately be how frequently the Court finds violations of Article 18. Rather, it is whether the signal conveyed by such findings genuinely reaches those to whom it is addressed: the states themselves. By "state", I mean every branch of government. An Article 18 violation rarely reflects the actions of the executive alone. More often, the legislature has laid the foundations for the abuse—or actively facilitated it—while the judiciary has proved unable to prevent it.

Ultimately, therefore, what matters most is that the warning conveyed by an Article 18 judgment is heard and acted upon by states, irrespective of how broadly or narrowly the Strasbourg Court ultimately chooses to develop its Article 18 jurisprudence.

Thank you.

Round Three

Absence of Control as a Shield for Impunity

Professor Pazartzis: Time is moving on, so let us begin our final round. Professor Marouda, let me return to you. Where there is an absence of control—or simply gaps in control—how can we ensure that these do not become a shield for impunity?

Professor Marouda: Thank you for the question. We have already discussed what I described as the instrumentalisation trap and the atrocity trap. This brings me to a third challenge: the impunity trap.

There are territories within Council of Europe member States over which effective control cannot be exercised, yet which monitoring bodies are nevertheless expected to monitor. When you arrive in Cyprus, you cannot access the northern part of the island without legitimizing *de facto* authorities. In Georgia, you cannot travel to Abkhazia or South Ossetia. In Ukraine, monitoring bodies have been unable to access Crimea since 2014. The list of inaccessible territories continues to grow, including parts of Moldova and elsewhere.

What, then, can a monitoring body realistically do? It produces a report indicating that, notwithstanding the absence of control and the lack of physical access, the situation appears to be broadly as described on the basis of the available information. Yet the absence of control should never, in itself, become a source of legitimised impunity. Whenever monitoring bodies are unable to reach a territory, an accountability gap inevitably emerges.

Nor are inaccessible territories the only source of this problem. Exclusion may also result from institutional developments. Following Russia's expulsion from the Council of Europe, the Organization's monitoring bodies immediately lost their competence with respect to the Russian Federation. Consequently, the systematic documentation that those bodies had previously produced could no longer continue or contribute to subsequent proceedings before United Nations mechanisms, the International Criminal Court, or other accountability processes. This represents a significant institutional gap, and one for which we need to develop appropriate responses.

A second source of uncertainty is what I would describe as procedural non-cooperation. Some governments have recognised that monitoring can be undermined simply by delaying replies to questionnaires, postponing procedures, or restricting country visits. During the COVID-19 pandemic, such practices became particularly apparent. For almost two years, public health considerations were frequently invoked to postpone monitoring visits altogether. Although monitoring bodies adapted by conducting hybrid monitoring visits, virtual engagement can never fully replace in-person visits. The experience nevertheless demonstrated how easily monitoring activities may be neutralised through sustained non-cooperation.

How, then, should monitoring bodies respond to such barriers? Through transparency regarding the obstruction itself. A monitoring body can—and should—state plainly that it was not permitted to conduct a visit and bring that fact directly to the political organs of the institution, such as the Committee of Ministers, and/or PACE, in the case of the Council of Europe, in order to highlight the lack of cooperation on the part of particular governments. Such situations are becoming more frequent, not less.

A third cause is the sheer physical impossibility of accessing certain areas, whether active conflict zones or disputed territories. What can a monitoring body realistically conclude about whether Georgia, or any other state, has violated a particular treaty in South Ossetia when access to the territory is simply impossible? It cannot. We therefore need to develop

appropriate responses—perhaps specialised task forces—to address the growing number of disputed and grey areas where impunity would otherwise prevail.

I will conclude with one final observation. A monitoring body that states clearly, publicly and on the record that it was unable to access a particular situation, explains the reasons for that inability, and records those facts in its report, has already performed an important function. It is neither concealing the obstruction nor allowing itself to be defeated by it. Rather, it identifies the obstruction explicitly. In the long run, I believe that this is the first condition for overcoming impunity—and it requires real institutional courage.

Having discussed the neutrality gap, the atrocity gap and now the impunity gap, let me conclude with this final thought: where a system chooses comfort over credibility, the result is the gradual erosion of monitoring itself. That is something we should act upon carefully, well before such cases ever reach the Court.

Thank you.

Minimalism, Maximalism, and the Survival of Human Rights

Professor Pazartzis: We have discussed the margin of appreciation and the living instrument doctrine, interpreted in different ways—minimalist or maximalist. Professor Mavronicola, one final question: in the face of an existential crisis, should human rights bodies favour a more minimalist approach in order to ensure their survival?

Professor Mavronicola: The question I ultimately arrived at is whether we should favour more minimalist approaches in order to ensure the survival of human rights. In my view, this goes well beyond the specific issue of the living instrument doctrine being invoked regressively. It is a question for all of us who regard ourselves as proponents of human rights: is minimalism, in fact, the pragmatic way forward?

I should say that I do not consider myself a maximalist—I doubt many of us would readily place ourselves in either category. I therefore use these terms simply as shorthand for a broader question concerning pragmatism, and the notion of "minimising" rights so as to preserve them. I shall keep my answer brief.

I think one of the most important things is to remain clear-eyed when confronted with calls for minimalism—or even moderation—in the name of securing the survival of human rights. We must identify and distinguish precisely where such appeals invite us to make concessions that fundamentally undermine, or even contradict, the very concept of human rights itself.

That distinction is of enormous importance, particularly because we are facing existential threats to the system. We must constantly ask ourselves whether, in the name of preserving human rights, we are in fact contradicting or distorting the very notion of what human rights are.

It is worth recalling, once again, the Chișinău process. The *Letter of the Nine* claimed that there had been an overreach in the application of the European Convention on Human Rights which had, to quote its own words, "resulted in the protection of the wrong people." This was followed by the *Statement of the Twenty-Seven*, which asserted the rights and freedoms of, again to quote, "our populations" as against those of migrants.

That language—"our populations"—and the broader "us and them" politics that runs throughout both the Chișinău process and the Declaration itself, effectively carves out categories of people whose rights are regarded as carrying less weight, or whose rights should not be permitted to create "unnecessary" obstacles to migration policy.

In my view, this fundamentally challenges the very notion of the *human* in human rights.

Accordingly, if we are prepared to make concessions of that kind in the name of preserving human rights, we must ask ourselves, quite seriously, whether we are in fact preserving them at all.

Thank you.

Transformation or Continuity? Reading the Direction of State Practice

Professor Pazartzis: A similar question, by way of conclusion, for you, Katerina: to what extent do current state practices—narrowing the scope of rights and expanding permissible limitations—signal a transformation of the Convention system as a whole?

Dr Tsampi: Thank you once again. I now find myself joining Professor Mavronicola in Chișinău, since she has already done an excellent job of assessing what the Declaration has actually brought us. Let me make two brief points.

First, the Convention system was always designed to accommodate balancing, including through the margin of appreciation. All of that doctrinal machinery already exists. What is genuinely changing, however, is that states no longer present restrictions on rights merely as exercises in balancing or as exceptional interferences. Increasingly, they conceive of rights themselves in narrower terms—not as broad guarantees, but as

interests that compete on relatively equal footing with state-defined priorities. In my view, the Chişinău Declaration has reinforced that trend considerably.

Secondly, I would draw attention to something conspicuously absent from the Declaration: there is no interest whatsoever in the rule of law or democratic backsliding. There is no mention of pressures on judicial independence, the shrinking of civic space, or increasing restrictions on media freedom. Indeed, there is an almost complete absence of any explicit rule-of-law framing. That omission is, I believe, something we genuinely need to acknowledge and critically reflect upon.

That said, state practice is one thing; whether it is accepted by the Court is another. Ultimately, it is the Court's response that will determine whether the Convention system itself undergoes a genuine transformation. As today's discussion has already demonstrated—by voices far more qualified than mine—that question remains open.

There is, however, one further point worth making. Since we are in Athens, let me borrow an observation from Professor Roucounas: states remain the primary subjects of international law, but they are far from its only users. Although peoples, social movements and civil society organisations played little part in the process that ultimately produced the Chişinău Declaration, they remain central actors within the Convention system. European democracies are, after all, composed of individuals, movements and organisations. It is therefore our collective responsibility to support and empower the Court as it navigates the challenges that lie ahead.

I shall leave it there.

Conference Proceedings

Panel 3

Looking Forward: Reinforcing Universality

Moderator: Professor Linos-Alexander Sicilianos

Speakers: Professor Pierre d'Argent · Professor Makane Moïse Mbengue · Professor Jean-Marc Thouvenin · Professor Hélène Tigroudja

Opening Remarks

Professor Linos-Alexander Sicilianos: We now move from the Council of Europe and other regional organisations to the universal level, turning our attention to the International Court of Justice and the United Nations human rights treaty bodies.

We are fortunate to have an outstanding panel of speakers, bringing together leading academics, practitioners, members of UN human rights treaty bodies—including the Vice-President of the Human Rights Committee—and legal counsel involved in some of the most significant human rights cases currently pending before the International Court of Justice.

Round One

The Significance of The Gambia v. Myanmar

Professor Sicilianos: I would like to begin with Professor Pierre d'Argent of the University of Louvain, member of the Institute of International Law. Professor d'Argent, you are currently serving as legal counsel for The Gambia in *The Gambia v. Myanmar*, concerning the alleged genocide of the Rohingya minority. How do you assess the significance of this case in the broader context of the genocide cases that have come before the International Court of Justice?

Professor Pierre d'Argent: Thank you very much, Professor Sicilianos, and my sincere thanks to the Marangopoulos Foundation, its President, and its Secretary-General for the invitation.

Let me approach the question in reverse order, beginning with the broader context before turning to the significance of the case itself.

That context consists of both completed and pending proceedings under the Genocide Convention. Among the completed cases are *Bosnia and Herzegovina v. Serbia and Montenegro*, in which the Court found that genocide had occurred but that it was not attributable to the respondent State, and *Croatia v. Serbia*, where the Court concluded that the atrocities committed amounted to ethnic cleansing rather than genocide. The Genocide Convention has also been invoked in cases that did not proceed to the merits, notably *Democratic Republic of the Congo v. Rwanda*, in which the Court held that it lacked jurisdiction because Article IX of the Convention was not binding upon the respondent, and, more recently, *Sudan v. United Arab Emirates*, which was dismissed at the provisional measures stage.

The pending cases include, of course, *The Gambia v. Myanmar*; the case currently attracting the greatest public attention, *South Africa v. Israel*; and, as Professor Thouvenin—my neighbour on the panel—will discuss in greater detail, *Ukraine v. Russian Federation*, which was instituted before the South Africa case. Perhaps, as in football, the Russian Federation has concluded that the best form of defence is attack. We shall see what that strategy ultimately yields.

Turning to the legal and factual significance of *The Gambia v. Myanmar*—and no strong legal case exists without equally strong facts, carefully collected and presented—I would emphasise two points.

From a legal perspective, the case turns principally on establishing *dolus specialis*, the specific intent required for genocide. Our approach has been to demonstrate that intent through seven indicators of genocidal conduct, ranging from the systematic discrimination directed against the Rohingya population, to the widespread use of sexual violence, the prevailing climate of impunity, and the particular *modus operandi* of the military operations that we have documented.

Ultimately, however, I believe the case requires the Court to make a fundamentally normative assessment. The essential question is whether it is reasonable to conclude that a State engaging in conduct of this nature nevertheless lacked the intention to commit genocide. The Court's own standard—the requirement that genocidal intent be the "only reasonable inference"—is itself, in my view, an inherently normative test.

This is a case involving clearly intentional killings, supported by overwhelming factual evidence. Whatever the Court ultimately decides, I am confident that it will take great care not to prejudge the case that now looms over all of us—*South Africa v. Israel*. I would venture that there will be very little in the *The Gambia v. Myanmar* judgment from which

one could infer how the Court may approach that case. That said, if we were to lose, Israel's task would become considerably easier. If, on the other hand, we succeed, I would be more cautious were I in Israel's position. In any event, the two cases are factually very different, and I shall say no more about the proceedings still to come.

Let me turn instead to the evidentiary dimension of the case, which I regard as equally significant. *The Gambia v. Myanmar* would simply not exist without the extraordinary work carried out in Geneva by the relevant United Nations human rights mechanisms, including the Commission of Inquiry and the Fact-Finding Mission. In an important sense, the Court now holds the future of an entire system in its hands. If it were to conclude that the material assembled through these mechanisms is insufficient to withstand judicial scrutiny, one might reasonably ask why States should continue investing millions of dollars each year in investigative bodies whose findings cannot ultimately be relied upon before an international court. The implications therefore extend well beyond this particular dispute: the case brings together years of work by highly skilled investigators and commissions of inquiry, and its outcome will inevitably influence perceptions of the value and credibility of those mechanisms. Were that evidentiary framework to collapse, it is difficult to envisage what could realistically replace it as a foundation for an effective international human rights system.

It is worth recalling what these investigators actually do. Their work extends far beyond collecting testimonies. They conduct detailed interviews, maintain extensive records, and protect witnesses by preserving their anonymity. According to Myanmar's counsel, however, that very anonymity constitutes a weakness, as it allegedly prevents the Court from adequately testing the evidence.

Our response was to bring witnesses before the Court itself, with the assistance of NGOs operating on the ground. Survivors travelled from Cox's Bazar to The Hague—many boarding an aircraft, or even walking on a paved road, for the first time in their lives—to recount, in camera, the atrocities they had endured. Having worked on this case since 2019, I can say that reading a witness statement is one thing; testing that testimony before the Court is quite another. Counsel for the applicant leads the witness through the statement, opposing counsel conducts cross-examination, and the judges ask their own questions. It is at that stage that the evidence is truly tested—and where an entire case may either stand or collapse.

By the conclusion of the first round of pleadings and witness examinations, I was convinced that the Court already regarded the underlying conduct as sufficient, at the very

least, to constitute crimes against humanity. The second round was therefore concerned with persuading the Court to go one step further—to find the existence of *dolus specialis* and, consequently, genocide. Following the first round, however, I found it difficult to imagine that the Court would characterise the conduct as anything less than crimes against humanity.

For all these reasons, the significance of *The Gambia v. Myanmar* for future litigation—and for the wider UN human rights architecture in Geneva, including its commissions of inquiry—is immense. I also expect the case to become an important reference point for the manner in which evidence and witness testimony are presented before the International Court of Justice. Cases of this nature cannot be litigated solely through documentary evidence; ultimately, they require individuals to appear before the judges and testify to the suffering they have endured. That would be my first account of the case.

Systemic Integration as a Strategy for Reaffirmation

Professor Sicilianos: Thank you very much for this testimony from a practitioner who knows, from the inside, exactly what is happening on the ground. I now turn to another practitioner and close friend, Professor Makane Moïse Mbengue, member of the Institute of International Law, member of the Curatorium of The Hague Academy of International Law, and Professor at the University of Geneva. Among many other cases, you participated in the landmark advisory proceedings on climate change before the International Court of Justice. In that opinion, the Court referred to the International Tribunal for the Law of the Sea, the European Court of Human Rights, and the Inter-American Court of Human Rights—an illustration of systemic integration across different branches of international law. My question is this: how can strategies of systemic integration contribute to reaffirming international human rights law?

Professor Makane Moïse Mbengue: Thank you very much, Mr President. It is a great pleasure to be here among such distinguished colleagues and friends.

I see a clear continuity between Professor d'Argent's remarks and your question on systemic integration. Pierre has just illustrated what I would describe as the *ratione personae* dimension of systemic integration: ensuring that the broadest possible range of actors within the international community—States and international organisations alike—act as guardians of the international human rights system.

I would like to focus on two additional dimensions: the substantive and the institutional.

At the substantive level, if we genuinely seek greater universality and a stronger reaffirmation of international human rights law, we must deliberately integrate—or, to use the word I prefer, *inject*—human rights law into other branches of international law. Too often we assume that the principal threats to the human rights system originate within the human rights regime itself. In reality, many arise from other fields of international law. International investment law and investment arbitration, with which I have been extensively involved in practice, provide particularly instructive examples.

Let me offer two illustrations.

The first concerns investment arbitration. Several years ago, a Dutch investor initiated proceedings against Zimbabwe in a dispute raising significant human rights issues, particularly relating to the rights of indigenous peoples. The tribunal adopted the view that it was not its role to take account of what it termed "the universe of international law" and expressed uncertainty as to how international investment law interacted with international human rights law. Human rights law was therefore considered irrelevant to the dispute.

My second example concerns treaty negotiations rather than adjudication. I participated in the negotiations of the investment protocol for the African Continental Free Trade Area. At an early stage, considerable disagreement emerged as to whether the agreement should refer to human rights at all. One delegation, in particular, could not accept that investment law and human rights law were connected. As a compromise, I proposed using the expression "investment-related human rights." If one reads the final agreement today, the term "human rights" does not appear in isolation; instead, it refers to "investment-related human rights." I must confess that this wording was my own proposal. As an expert participating in the negotiations, I considered it necessary to identify a pragmatic compromise capable of moving the negotiations forward.

This experience illustrates how much remains to be done if human rights law is to be effectively injected into other branches of international law. At the same time, there are encouraging developments. As Professor Merkouris indirectly observed this morning, a new generation of investment agreements increasingly recognises States' right to regulate foreign investment in order to protect human rights.

That said, substantive integration must not come at the expense of the structural and functional foundations of human rights law. Human rights law is not merely a catalogue of rights; it is fundamentally a system of duties—duties to respect, protect, and fulfil human rights. Even where elements of human rights law are incorporated into other legal

regimes, there remains a risk that these underlying foundations will gradually be weakened.

In this respect, I believe the International Court of Justice adopted the correct approach in its advisory opinion on climate change. When addressing the responsibilities of foreign investors and corporations, the Court emphasised States' obligation to regulate private actors, including in order to protect the right to a healthy environment, rather than framing the issue solely in terms of corporate rights.

My final point concerns the institutional dimension of systemic integration. Here, I believe considerably greater coordination is required, and I would distinguish two forms of such coordination.

The first is horizontal coordination. International courts and tribunals should engage in much deeper cross-fertilisation and judicial dialogue. The International Court of Justice referred in its climate advisory opinion to both the European Court of Human Rights and the Inter-American Court of Human Rights. However, I would characterise this as *macro*-horizontal coordination. We also need *micro*-horizontal coordination.

The right to a healthy environment provides a useful illustration. The Inter-American Court recognised that right as directly justiciable, whereas the International Court of Justice adopted a more cautious position. Although this distinction may appear technical, it has significant practical consequences. In discussions with government representatives, considerable time is often spent debating whether the right itself is directly enforceable, rather than addressing the substantive environmental challenges before us.

Second, there is the question of vertical coordination. I was pleased to hear several speakers this morning emphasise the importance of political institutions, an aspect that is too often overlooked, even at the universal level. An advisory opinion is only the beginning. The real challenge lies in translating judicial guidance into political commitment and institutional implementation.

I was reminded of this during COP30 in Belém. We sought to include in a Conference of the Parties decision a reference to the advisory opinions delivered by the International Tribunal for the Law of the Sea, the International Court of Justice, and the Inter-American Court of Human Rights. A majority of States opposed the proposal, arguing that they did not understand why COP decisions should refer to advisory opinions on issues that were already the subject of political negotiation within the climate process itself.

The same obstacles that exist within the European human rights system therefore also arise at the universal level. Strengthening vertical coordination between judicial institutions and political bodies remains one of the principal challenges if systemic integration is to contribute meaningfully to the reaffirmation of international human rights law.

Thank you.

Public Interest Litigation and the Risk of Legitimisation

Professor Sicilianos: Thank you very much for this extremely interesting analysis and for illustrating, through concrete examples, the practical implications of systemic integration. I would now like to return to the issue of public interest litigation. We have discussed *The Gambia v. Myanmar*, a case involving a dictatorial regime. My deliberately provocative question to the Secretary-General of The Hague Academy of International Law, Professor Jean-Marc Thouvenin, is this: does public interest litigation brought against an illegitimate government risk inadvertently contributing to that government's international legitimacy?

Professor Jean-Marc Thouvenin: Thank you very much. It is indeed a difficult question, but before addressing it, allow me to say what a pleasure it is to be here, in such a remarkable setting, among colleagues, students, and friends.

I should also take this opportunity to pay tribute to the remarkable presence of Greek students and professors at The Hague Academy of International Law. Anyone consulting the Academy's records will see that, over the past decade, approximately twenty Greek students have attended each summer—a remarkably high number. This undoubtedly reflects the longstanding commitment of Greek international lawyers to the Academy. It is also a fitting moment to congratulate Alexandre Sicilianos on his election as President of the Curatorium of The Hague Academy, becoming only the third Greek to hold that position, after Politis and Valticos. Greeks may appear somewhat overrepresented among the Academy's Presidents, but there are excellent reasons for that.

Turning now to your question.

The issue is essentially whether, when a regime commits serious and systematic violations of human rights, an *actio popularis* before the International Court of Justice or another international tribunal may inadvertently strengthen the international standing of what

we regard as an illegitimate government. Afghanistan provides a particularly instructive example.

The situation of Afghan women under Taliban rule presents clear legal avenues for international litigation. Proceedings could be brought under the Convention on the Elimination of All Forms of Discrimination against Women, whether through arbitration or before the International Court of Justice. Another, less frequently mentioned possibility would be the Convention on the Political Rights of Women, which might in fact provide an even more straightforward legal basis. Yet, despite these possibilities, no proceedings to vindicate Afghan women's rights were initiated for a considerable period.

Only several months ago did a group of States announce proceedings against Afghanistan, supported by many others. But that initiative was accompanied by understandable hesitation. Instituting proceedings for this purpose necessarily requires someone to represent Afghanistan before the Court, thereby creating an opportunity for the Taliban authorities to appear and claim that they defend the interests of the Afghan State on the international stage as its legitimate government. The obvious question is whether this risks conferring a degree of legitimacy upon a regime that, to my knowledge, has been formally recognised by only one State, namely Russia.

This dilemma was explicitly acknowledged by the States themselves. As they stated in their declaration:

> "This action is without prejudice to our firm position that we do not politically recognise the Taliban *de facto* authorities as the legitimate representation of the Afghan population. However, the Taliban remain responsible for Afghanistan's international legal obligations."[1]

This wording almost conveys a sense of regret at having to face the Taliban's representatives before the ICJ. Nevertheless, I believe it reflects the correct and workable approach. Institutional unease should not paralyse legal action. States can pursue accountability while making equally clear that engaging with *de facto* authorities for the purposes of international litigation does not amount to recognising them as the legitimate government. Once that distinction is maintained, the apparent tension becomes manageable.

[1] See the Declaration on the Launch of an initiative on accountability for Afghanistan's violations of CEDAW, media release, at https://www.dfat.gov.au/news/media-release/launch-initiative-accountability-afghanistans-violations-cedaw-declaration (last visited on 3 September 2026).

The problem becomes considerably more difficult where competing entities each claim to represent the State internationally. At that point, the issue is no longer simply whether proceedings should be brought, but who is entitled to speak on behalf of the respondent State before the Court or tribunal.

There are instances in which international tribunals have addressed this question directly. One example is the ICSID annulment proceedings in *Valores Mundiales v. Venezuela*. The committee had no procedural alternative but to determine whether Venezuela should be represented by individuals appointed by Nicolás Maduro or by Juan Guaidó, who at the time had been recognised by numerous States, including many within Europe and the Americas, as the legitimate representative of the Venezuelan people, notwithstanding the practical uncertainties surrounding that recognition.

The committee adopted a thoroughly orthodox approach. It considered, first, which authority exercised effective control over the territory—namely Maduro's government—and, secondly, whether the individual appearing before it held a valid mandate under Venezuelan law. As both conditions were satisfied, the committee accepted that Maduro's appointee represented the country. It was, in essence, a traditional solution grounded in the principle of effective control.

The issue arose in an even more complex form in the proceedings concerning Myanmar.

Following the military coup of 2021, the junta seized power and detained Aung San Suu Kyi together with the members of the democratically elected government. A government in exile—the National Unity Government (NUG), operating largely from abroad—claimed constitutional legitimacy and argued that the junta lacked authority to represent Myanmar internationally. It further maintained that the junta did not even exercise effective territorial control, notwithstanding its control of the principal cities and communications infrastructure. According to some estimates, it controlled no more than twenty per cent of the country's territory.

The National Unity Government therefore sought recognition before both the International Criminal Court and the International Court of Justice. Before the ICC, although Myanmar is not a party to the Rome Statute, it submitted a declaration under Article 12(3) accepting the Court's jurisdiction. The Court simply did not respond.

The same question subsequently arose before the International Court of Justice. As Professor d'Argent mentioned earlier, the proceedings had been instituted before the coup, but the change of government occurred while the preliminary objections were still

pending. The junta took control of the litigation, while the National Unity Government sought to assume itself control of Myanmar's representation before the Court.

The NUG approached me for assistance. I explained that I considered the prospects of success rather limited. Nevertheless, because I regarded the issue as one of considerable legal importance—and perhaps also because the identity of the opposing side left little room for moral ambiguity—I agreed to assist on a pro bono basis.

The NUG had one significant advantage. Myanmar's Permanent Representative to the United Nations in New York, appointed before the coup, remained loyal to the NUG and has continued to be recognised as representative of the State by the United Nations ever since. It cannot be an easy position, given that this man has no access to State funding, yet he has continued to discharge his functions.

He signed every document submitted to the Court on behalf of the NUG: the memorial withdrawing the preliminary objections, accepting the Court's jurisdiction, requesting that the proceedings continue to the merits, and offering assistance in establishing the facts. The Court gave no response. There was neither a formal ruling nor any informal indication of how it intended to address the issue.

In my view, the explanation lies in diplomatic formalism. Myanmar's ambassador accredited to the International Court of Justice in The Hague had also been appointed before the coup but, unlike the Permanent Representative in New York, declared his loyalty to the junta. The Court therefore continued to conduct the proceedings through him as Myanmar's representative, with the consequence that the junta retained control of the State's participation in the litigation.

That approach was certainly open to criticism, and numerous human rights organisations expressed precisely that criticism, placing considerable pressure on the Court. Nevertheless, the proceedings continued and the Court rejected the preliminary objections, which, in truth, were not particularly compelling. I believe that was ultimately the correct outcome.

Until Professor d'Argent mentioned a few moments ago, the hypothesis that The Gambia could perhaps "lose", I had simply assumed that The Gambia would prevail on the merits. But if The Gambia's application is finally dismissed, the junta will undoubtedly portray the judgment as a form of international vindication. That risk seems genuine.

At the same time, I find it difficult to identify a more satisfactory alternative. The only realistic possibility, if the Court had hesitated to accept the junta's claim that it represents the country before it, would have been to suspend the proceedings until the situation is settled in Myanmar – so perhaps indefinitely, but I do not believe that would have served either justice or the victims more effectively. For that reason, despite the undeniable institutional discomfort that such cases create, I believe the risk was one worth taking.

Human Rights Fatigue: Causes and Manifestations

Professor Sicilianos: Thank you very much for this insightful analysis of the risk of legitimisation, although I agree that, in this instance, it is unlikely to materialise. Let us hope that our friend Pierre d'Argent prevails in the case.

We have discussed the Genocide Convention, CEDAW, and we could equally mention ICERD—the International Convention on the Elimination of All Forms of Racial Discrimination—all UN human rights treaties that have featured before the International Court of Justice. Let us now turn from the ICJ to the United Nations treaty bodies and to Professor Tigroudja.

As Vice-President of the Human Rights Committee, responsible for monitoring the International Covenant on Civil and Political Rights, and at a time when the Covenant marks its sixtieth anniversary while discussions continue on a new convention on the rights of older persons, how would you assess States' current commitment to the universality of human rights? Are we witnessing a form of "human rights fatigue"? If so, what are its principal causes and manifestations?

Professor Hélène Tigroudja: Thank you very much for the invitation. This conference is both timely and necessary. It reminds us of the importance of continuing to discuss human rights while also seeking practical solutions, as my colleagues have already begun to do.

Allow me to begin with three preliminary observations linking our discussion to the previous panel.

First, regarding the question whether the European Court of Human Rights should adopt a specific interpretation of Article 3 in migration cases, I believe the issue must be viewed more broadly. The same question arises in environmental litigation: should the Court develop a distinct interpretation of jurisdiction, State responsibility, or even the Convention itself whenever a new category of cases emerges? That approach is potentially

dangerous. It risks opening a Pandora's box in which every novel issue generates its own bespoke interpretation of State responsibility. This concern extends well beyond migration; it is increasingly visible throughout the Council of Europe system and calls for considerable caution. Indeed, a forum devoted precisely to the protection of the right to a healthy environment within the Council of Europe system is scheduled to take place in Strasbourg next week.

Second, the living instrument doctrine, which has featured prominently throughout today's discussions, is also encountering significant resistance at the universal level. Only this past March, during the Human Rights Committee's public dialogue with Canada, the Canadian delegation argued strongly against an evolutive interpretation of the Covenant, advocating instead an originalist reading fixed in 1966. My response, likewise on the public record, was straightforward: we cannot remain confined to the legal understandings of the 1960s. The evolutive interpretation of human rights has, fortunately, served women and many other groups remarkably well. I shall return to this point later.

Third, with regard to the International Court of Justice's advisory opinion on climate change, it is worth recalling that the Court did not limit itself to citing the jurisprudence of the European and Inter-American Courts of Human Rights. It also relied extensively on the Human Rights Committee's practice, including *Teitiota v. New Zealand*, the *Daniel Billy* communication, and General Comment No. 36. I mention this because a provocative question was raised earlier today: what is the value of the United Nations treaty body system if its experts are unpaid and its decisions are non-binding?

For me, that question contains its own answer. I fully agree with Professor Mbengue's emphasis on systemic integration. The purpose of our work is precisely to contribute to a broader normative dialogue. The Committee's views may not be legally binding, but that is not the decisive point. As I often tell my students, when those views are subsequently relied upon by the International Court of Justice, the European Court of Human Rights, or other regional mechanisms, the Committee has fulfilled an essential part of its mandate. Their normative influence, rather than their formal binding force, is what ultimately matters.

Turning now to human rights fatigue, what strikes me most in listening to today's discussions on migration is that this is by no means an exclusively European phenomenon. From the perspective of Geneva, human rights fatigue is clearly visible across the international system. Rather than revisiting manifestations already mentioned

today, such as treaty withdrawals or reservations, let me highlight three additional developments.

The first concerns language itself. Earlier this morning we discussed the Istanbul Convention, yet I do not believe we fully identified the underlying problem. Increasingly, States refuse even to use the term "gender." Instead, expressions such as "gender ideology" are employed as political labels designed to delegitimise the concept itself. Simply using the word "gender" may now result in being dismissed as "woke." Certain terms have effectively become forbidden. Gender is one example; climate change is increasingly another. We are witnessing a deliberate and well-organised strategy, particularly during negotiations of non-binding international instruments, to remove references to gender, gender identity, sexual orientation, and even climate change. The contestation now extends beyond rights themselves to the vocabulary through which those rights are articulated.

The second manifestation concerns principles that many of us once regarded as settled. Consider Article 1 of the Universal Declaration of Human Rights, proclaiming that all human beings are born free and equal in dignity and rights. If States were asked today whether they still support this idea, I doubt there would even be political agreement. This resistance is not limited to a few States. In the Human Rights Committee, we face serious challenges even from countries like Australia and Canada on issues that many see as fundamental. Nothing can therefore be taken for granted. We cannot assume that equality has been secured and simply move on to newer issues such as climate change or artificial intelligence. We must pursue both objectives simultaneously: addressing emerging challenges while safeguarding the foundational principles of international human rights law.

The third manifestation is less visible but equally significant: institutional fatigue. It concerns funding, nominations, and sanctions. Without adequate financial support, human rights bodies simply cannot function effectively. Equally important is the manner in which States nominate experts and judges to serve within these institutions. Finally, there is the growing phenomenon of sanctions against human rights experts themselves. We have long had the International Court of Justice's 1999 advisory opinion affirming the immunity of Special Rapporteurs. Yet today, experts who express positions considered unacceptable by States increasingly face the risk of personal sanctions. This is not confined to the United States; similar tendencies are observable in several European countries. It is an issue that deserves far greater attention.

As for the underlying causes of this fatigue, I shall be brief, since several have already been identified by previous speakers.

In my view, the principal underlying factor is fear of otherness. On this point I entirely agree with President Sicilianos. Today the target may be migrants in Europe; tomorrow it may be women, journalists, trade unionists, or any group perceived as challenging established social norms or traditional values.

A second cause is the misuse and instrumentalisation of human rights themselves, coupled with what I would describe as their misappropriation. We increasingly witness anti-rights movements adopting the language of human rights in order to justify restrictions on the rights of others. One need only consider certain groups that describe themselves as "feminist" while advancing positions fundamentally incompatible with gender equality.

Finally, human rights institutions must also acknowledge their own share of responsibility. The multiplication of treaties, procedures, and mandates has produced an increasingly fragmented and bureaucratised system. As Professor Mbengue observed earlier, fragmentation remains a significant challenge. From within the United Nations system, I can attest that the bureaucratic burden has become immense, often disconnected from the original purpose of these mechanisms.

This leads me to one possible way forward, although we shall return to solutions later in the discussion. I fully agree with the approach adopted by the Inter-American Court of Human Rights in its advisory opinion on climate change. We must abandon siloed approaches and embrace genuine systemic integration. In my view, it is one of the most promising avenues for overcoming the current fatigue affecting the international human rights system.

Round Two

The Gambia Case Within the Wider Arc of Public Interest Litigation

Professor Sicilianos: Thank you for this extremely rich analysis, which has touched on so many important issues—from the misappropriation of human rights and bureaucratisation to sanctions, the nomination of experts and judges, and even the terminology we use.

I would now like to return to Professor d'Argent and to *The Gambia v. Myanmar*, a case which I—and, I believe, many of us—regard as seminal. Professor d'Argent, how would you situate this case within the broader development of public-interest litigation before the ICJ, a theme that has run throughout much of today's discussion?

Professor d'Argent: As I noted earlier, this is the first case in which—assuming matters proceed as expected—the Court may ultimately find a State internationally responsible for genocide. Yet its significance extends well beyond the Genocide Convention itself. In my view, the case has effectively opened the door to an entire category of public interest litigation, particularly in two respects: jurisdiction and provisional measures.

Before turning to those issues, let me briefly respond to Jean-Marc's remarks concerning the question of the illegitimate government. The Court did what it always does: through the Registrar—who is, in essence, the Court's postman—it consulted The Gambia regarding the National Unity Government's request to withdraw the preliminary objections and proceed directly to the merits. The Gambia's response was simply that it had no position on the matter, as it was not for it to decide. The Court nevertheless proceeded as it did, due in part, I believe, to the position taken by the accredited ambassador in The Hague.

There is a particularly revealing passage in President Donoghue's opening statement, recorded in the verbatim transcript of the 2022 preliminary objections hearings. She observed:

> "Before I summarise the principal procedural steps in this case, I note that the parties to a contentious case before the Court are States, not particular governments. The Court's judgment, and its provisional measures orders, bind the States that are parties to a case."

She then moved directly to the procedural history. This was not complete silence on the issue, but it came very close. It was, I think, the Court's way of signalling to the international community why the junta continued to act on behalf of the respondent State. Frankly, from a litigator's perspective, we were rather pleased to find ourselves opposing such obviously unsympathetic respondents.

Turning to the preliminary objections judgment itself, I consider it a seminal decision. I had the honour of presenting the argument on standing on behalf of The Gambia, although, in truth, my task was greatly facilitated by earlier developments—notably the

obiter dictum in *Belgium v. Senegal*, the 2015 resolution of the *Institut de Droit International*, and the work of Judge Giorgio Gaja, who drafted that resolution.

The key concept, in relation to obligations *erga omnes* and *erga omnes partes*, is the right of any State to invoke responsibility "*in any given case*". That is the operative formula of the Judgment and it comes from the Krakow resolution of the *Institut*. It opens the way for further litigation based on obligations owed *erga omnes*, and more particularly *erga omnes partes*. The Court rejected an argument that had attracted considerable support—including from Judge Xue—that a distinction should be drawn between a State's entitlement to invoke another State's responsibility for breach of such obligations and its capacity actually to institute proceedings pursuant to a compromissory clause. The Court's reasoning was straightforward: if a dispute exists as a result of the invocation of responsibility, and the parties have consented to the Court's jurisdiction over that dispute, proceedings may be instituted. That reasoning paved the way for the subsequent case against Syria, as well as for the genocide proceedings that we have already discussed at length. In that sense, I regard the judgment as genuinely opening a new chapter in international litigation.

The case is equally significant with respect to provisional measures. The 2019 request relied almost entirely on the report of the Fact-Finding Mission, and obtaining provisional measures was of paramount importance. Our objective was to protect the Rohingya who remained alive in Myanmar. After all, the merits phase concerns the dead, while the living are protected, if at all, by the provisional measures themselves.

Securing those measures proved particularly important because the Court took the courageous step of requiring Myanmar to submit periodic reports on its implementation of the Order—initially after four months and thereafter every six months. We, in turn, responded to those reports, and the Court formally took note of that exchange. The Court also modified its own internal judicial practice under Article 11 by establishing an ad hoc committee of three judges to supervise compliance with the provisional measures, drawing upon its inherent authority to revise such measures where necessary.

If one looks ahead to *South Africa v. Israel*, it is clear how profoundly the provisional measures phase reshaped the global public narrative surrounding that conflict. In public interest litigation of this kind, I would go so far as to suggest that provisional measures may ultimately prove more consequential than the final judgment on the merits, precisely because they shape the international narrative at a moment when that narrative matters most.

We witnessed something similar in the Armenia case. There, we secured highly significant provisional measures which, in practice, the respondent State simply ignored. Nevertheless, they enabled Armenia to maintain the visibility and relevance of its legal position internationally, facilitating engagement with the General Assembly, the Security Council, and other international actors.

There is, finally, something even more fundamental at work in this form of public interest litigation. The defining virtue of any genuine court of law is the equality of the parties before it. Law governs relationships; litigation concerns relationships that have broken down. Proceedings before an independent international court establish a new legal relationship founded upon the equality of the parties.

For a State such as The Gambia, this case has therefore been transformative in precisely that sense. It established, for the first time, an equal legal relationship with a much larger and geographically distant State with which it had previously had virtually no relationship at all. In that respect, the case has been transformative not only from a legal perspective, but also for the international community more broadly—and, in the long run, I find that genuinely fascinating.

Shaping Universality: Diversity Within a Common Framework

Professor Sicilianos: Thank you very much for reminding us of the importance of *erga omnes partes* obligations, and for placing particular emphasis on provisional measures and the equality of the parties.

I would now like to turn to the notion of universality itself. We have spoken today of universal treaties, including the Genocide Convention and the ICCPR. Professor Mbengue, how should we understand and shape universality today? Should universality itself embrace greater diversity? And, more broadly, how can we reconcile the universal character of international law with the diversity of the societies, cultures and legal traditions it seeks to encompass?

Professor Mbengue: Thank you, Mr President. Allow me to be a little provocative and bring a Global South voice into today's conversation, beginning with two brief propositions.

First, on human rights fatigue: I do not think “fatigue” is quite the right word. I would instead speak of human rights blues. You know the blues as a musical form: it combines love with sadness. To my mind, that comes closer to capturing our present reality.

Second, on public interest litigation: whose public interest, exactly? Which public interest? We should not treat public interest litigation as a single, uniform phenomenon.

My dear friend Professor d'Argent did not give you the full context of *The Gambia v. Myanmar* earlier. The case began within the framework of the Organisation of Islamic Cooperation (OIC), which encouraged and supported The Gambia in bringing the proceedings. It is not that The Gambia, a small country in West Africa, simply woke up one day and decided to become the guardian of the international legal system. I know my friend is not seeking to obscure this history, but I think it is important to be precise about what we mean by "public interest litigation".

This matters because, in the field of human rights, many countries of the Global South are concerned that public interest litigation may promote a one-size-fits-all approach to human rights obligations.

I recall that, during the advisory proceedings on climate change before the International Court of Justice—and my colleague Professor Thouvenin can correct me if I am mistaken—many African States were initially reluctant to participate, precisely because they feared becoming subject to interpretations of human rights obligations that did not adequately take account of their particular circumstances, especially their specific vulnerability to climate change.

So, for me, the way we shape universality matters enormously. I would speak of diversity within universality, or even differentiated universality, because we live in a world characterised by differentiated vulnerability.

This is not about reviving cultural relativism; rather, it is about bringing principles of fairness, equity, and justice more fully into the field of human rights law.

The African Union advanced precisely this argument before the ICJ in the climate change advisory proceedings. It advocated for an interpretation of human rights that is oriented towards climate justice, because Africa has contributed only minimally to the problem: historically, the continent accounts for approximately three per cent of cumulative greenhouse gas emissions. How, then, can we place every State on the same footing when interpreting and applying the right to a healthy environment?

For me, diversity within universality requires us to think seriously about incorporating additional normative principles into the interpretation and implementation of human rights law: *inter*generational equity, to a much greater extent than at present;

*intra*generational equity, reflected in the principle of common but differentiated responsibilities; and sustainable development, together with its corollary, the right to development.

This year marks the fortieth anniversary of the Declaration on the Right to Development. We have been trying—and I do mean trying—to finalise a draft covenant that would give this right greater legal force, yet powerful States continue to block meaningful progress. The United States did not even participate in the negotiations, and other influential States likewise resisted further development of the project. How, then, can we genuinely speak of universality if we are unable to secure the realisation of the right to development?

In my view, an à la carte treatment of human rights should not be regarded as fragmentation. On the contrary, it is necessary if we want States to genuinely embrace the universality of certain fundamental rights. That is what I mean by diversity within universality. Thank you.

The Difficulty of Securing an Advisory Opinion

Professor Sicilianos: Thank you very much for bringing this Global South perspective. It is true that, in the advisory opinion on climate change, the principle of common but differentiated responsibilities was not given particular emphasis, although Judges Bhandari and Xue, in their respective declarations, expressed views that, in part, support the approach you have just outlined.

This also raises a broader question about the role of advisory opinions in addressing contested issues of international law. Professor Thouvenin, drawing on the ICJ climate change advisory opinion and other examples, what are the main difficulties involved in successfully bringing a request for an advisory opinion before an international court or tribunal?

Professor Thouvenin: Thank you very much, Mr. President. There are, of course, many political obstacles to obtaining an advisory opinion from the ICJ, as we all know. The numbers themselves, however, provide a useful indication of just how difficult—or, indeed, feasible—such requests may be.

If we look at the first decade of the United Nations, from 1945 to 1955, we find numerous proposals for advisory opinions. Perhaps, at the founding of the Organisation, there was simply a greater need for legal clarification. Yet many proposed requests never secured adoption by the General Assembly. They concerned, among other matters, the treatment

of Indians in the Union of South Africa; the situation in Palestine, including the competence of the United Nations to recommend partition between an Arab and a Jewish State and the related issue of Israel's admission to the United Nations; alleged Soviet violations of fundamental human rights and Charter principles; and Palestinian refugees. In total, nine proposed requests—several of them relating to human rights—were rejected. During the same period, however, nine requests were successfully adopted and resulted in advisory opinions. In other words, the success rate was approximately fifty per cent.

Between 1955 and 1995, only two proposed requests failed to secure adoption. One concerned voting procedures relating to non-self-governing territories and was again linked to human rights. The other, submitted in 1992, concerned the conformity with international law of a State's practice of arresting and forcibly transferring individuals from the territory of another State for criminal prosecution without that State's consent. It was clearly directed at a then recent practice of the United States and was probably too narrowly framed to obtain sufficient support.

Since 1995, two further proposed requests have failed. One concerned the compatibility with the UN Charter of the use of armed force without Security Council authorisation or outside the framework of self-defence. It would have been interesting to see whether the Court recognised any additional exceptions, but the proposal never proceeded. The second concerned the immunities of Heads of State, Heads of Government, and other senior officials—a question closely connected with the ICC and the evolving law on immunities. At the same time, three further requests have been successfully adopted.

What do these figures tell us? In my view, they demonstrate that seeking an advisory opinion is by no means a hopeless endeavour. Why, then, do we not see more requests? Why, for example, has no State sought an advisory opinion on whether sanctions imposed on an ICC judge are compatible with international law—or, more broadly, on the legality of unilateral sanctions? The international community remains genuinely divided on that important issue. More than half of all States consider unilateral economic sanctions to be contrary to international law, while others take the opposite view. There may also be an intermediate position, distinguishing between lawful and unlawful unilateral sanctions—which, incidentally, is my own view. An authoritative judicial clarification would therefore be of considerable value.

The relative scarcity of requests can, I think, be explained by several factors. The first is a simple lack of awareness of what advisory opinions are capable of achieving. You might be surprised, but in The Hague I regularly meet ambassadors who are not international

lawyers and who know very little about the work of the ICJ. After all, the Court is based in The Hague rather than New York, somewhat remote from the daily life of the diplomatic community. That has begun to change. Recent high-profile proceedings—on climate change, Chagos, and *South Africa v. Israel*—have made diplomats much more attentive to developments at the Peace Palace. For many years, however, this was simply not the case, and many still do not fully understand how the process works.

A second reason is political pressure. Anyone who has followed the negotiations surrounding the recent General Assembly resolution requesting the climate change advisory opinion will have seen reports that Vanuatu came under considerable pressure from the United States. Pressure exerted by major powers can have a significant chilling effect on initiatives of this kind.

A third and final reason is uncertainty regarding the answer the Court may ultimately provide. Is it always preferable to seek judicial clarification, even at the risk of receiving an unfavourable answer? Imagine if the Court had adopted a much more conservative approach in its climate change advisory opinion. That outcome was entirely conceivable; ten years ago, very few people would have predicted either the breadth or the unanimity of the opinion eventually delivered. Faced with such uncertainty, States may conclude that it is politically preferable to leave certain questions unresolved rather than submit them to judicial determination.

I am not sure that I have fully answered your question, but, if I may, I would like to add a few observations on Advisory Opinion OC-23/17 of the Inter-American Court of Human Rights concerning the Environment and Human Rights. I was closely involved in that process, so I admit that I am not entirely impartial. In my view, it is a groundbreaking opinion—and that is not simply my personal assessment. At the same time, if one examines the question submitted by Colombia, it becomes apparent that it was exceptionally complex, containing numerous hypotheses and qualifications.

That complexity reflected Colombia's position in other related disputes. We therefore had to formulate the request with considerable care, ensuring that it raised legally meaningful questions while remaining acceptable to the requesting State. Indeed, the opinion introduced a concept developed specifically for that case—"functional jurisdiction"—which, frankly, was somewhat artificial, and the Court itself did not entirely follow the direction in which we had hoped to lead it. Nevertheless, framing the request in that way was necessary if the proceedings were to be initiated at all; a more direct formulation

would simply not have been acceptable to the client. In the end, however, the Court gave what I consider to be an excellent answer, and I remain proud of the outcome.

So the difficulties vary. Sometimes they stem from broader geopolitical considerations; at other times they arise from the domestic or diplomatic constraints facing the requesting State itself.

Let me conclude with the example of ITLOS. Since 2015, the International Tribunal for the Law of the Sea has effectively opened the way for advisory opinion requests. This was by no means self-evident, and many States opposed the idea that the Tribunal's Grand Chamber should possess such a competence under UNCLOS. Nevertheless, in its 2015 advisory opinion, ITLOS confirmed that such jurisdiction exists: an agreement between as few as two States conferring competence on a body designated under the relevant treaty is sufficient to found an advisory request. It was precisely this mechanism that subsequently made possible the ITLOS advisory opinion on climate change and international law—a process in which I also had the privilege of participating.

Reforming the UN Human Rights System

Professor Sicilianos: Thank you very much for this wonderfully detailed account of how such questions are crafted and brought before different international jurisdictions.

I would like to return to the UN human rights system and, in particular, to the treaty bodies. We have spoken of reform - I recall representing the Committee on the Elimination of Racial Discrimination, back in 2003, at the Malbun conference on the reform of the UN human rights system - and my sense, since then, is that progress has remained limited, and has too often been driven by cost-saving considerations rather than by genuine reflection on the scope and values of human rights, or on the ways in which international society has evolved since the adoption of the Universal Declaration. Professor Tigroudja, what is your view, and what substantive changes do you think are needed?

Professor Tigroudja: Thank you. I will be brief, mindful of the time. But first, Professor Mbengue: your expression "human rights blues" is perhaps too romantic. Love mixed with sadness is rather generous. I would very much like to share that romantic framing, but perhaps we can continue that discussion another time.

Very briefly, two weeks ago, together with Vice-President Jelić, I was in Berlin discussing precisely the limits of the current human rights architecture—its instruments,

mechanisms, and institutions—when confronted with challenges that the European Court of Human Rights, the UN treaty bodies, and even the African and Inter-American systems were simply never designed to address.

It is worth recalling, obvious though it may be, that the principal international human rights instruments were drafted in the 1950s and 1960s. The African Charter is somewhat more recent, and I shall return to that in a moment. These instruments were conceived within the framework of classical public international law: they are fundamentally State-centric and territorially based. Consider, for example, the Inter-American Court's 2017 advisory opinion. I believe the Court understood perfectly well where Colombia was trying to lead it, given the pending litigation with Nicaragua before the ICJ, yet deliberately chose not to answer that aspect of the request because, in an advisory proceeding, it was not prepared to revise the territorial basis of jurisdiction in international human rights law.

We also continue to operate within an international human rights system that has traditionally focused on civil and political rights. In this respect, Professor Mbengue, I entirely agree with your earlier observations: we need to bring the economic dimension much more fully into the discussion. We cannot continue to treat economic rights and the right to development as though international human rights law has little or nothing to say about them simply because of the traditional "generations of rights" framework.

At the same time, we are living in profoundly different societies, characterised by changing mentalities, scientific advances, technological developments, and the emergence of entirely new actors. The classical State-centric model no longer adequately reflects contemporary reality, given that many human rights violations today involve private actors, including multinational corporations whose influence may, in some respects, rival that of States. This, I believe—and it was very much the focus of our discussions in Berlin—marks one of the genuine frontiers of international human rights law: how do we regulate private actors, ensure their accountability, and address the increasingly transnational nature of human rights violations? We are also confronted with genuinely global challenges—climate change, but also mass atrocities—and must ask whether human rights mechanisms designed within a classical legal framework are capable of responding effectively to them.

This brings me to what I see as another important limitation: the limits of litigation itself, including public interest litigation. Litigants sometimes ask the European Court of Human Rights or the Human Rights Committee to resolve problems that are simply

beyond their institutional capacity: to solve the climate crisis, to end an armed conflict, or to address challenges that are fundamentally global in nature. Procedurally, however, the European Court has repeatedly explained that, given the requirements governing admissibility and causation, it is simply not equipped to establish facts in highly complex armed-conflict situations.

For that reason, I believe that what we are witnessing is not only a degree of human rights fatigue but also the need—particularly for litigators and NGOs working on armed conflict and environmental issues—to recognise the institutional limits of human rights bodies. We should avoid asking these institutions to deliver outcomes that they are structurally incapable of providing, because doing so inevitably creates expectations that cannot be fulfilled. We are already seeing this in the aftermath of the European Court's genuinely remarkable 2024 climate judgment. In a sense, we may have reached the outer boundaries of what existing human rights bodies—including the Human Rights Committee—can presently achieve in relation to these issues.

I am extremely grateful for the ICJ's advisory opinion, which will undoubtedly assist in this regard. Nevertheless, human rights bodies, acting alone, cannot resolve climate change, armed conflict, migration, or pandemics. The manner in which litigators and advocates frame the legal questions they bring before adjudicative bodies needs real caution.

Round Three

Professor Sicilianos: Many years ago, I found myself in The Hague on the day following the delivery of the International Court of Justice's advisory opinion on the legality of nuclear weapons. I attended a presentation by the Court's then President, Mohammed Bedjaoui, who was explaining his vote on the paragraph in which the Court declined to give a definitive answer to the question whether a State may resort to nuclear weapons when its very existence is at stake. I still remember one phrase from his remarks—I quote from memory: *"It was not for me to solve the existential problems of humanity."*

With that thought in mind, let us turn to our final round of questions. Given the time, I would ask everyone to keep their answers as telegraphic as possible.

Public Interest Litigation and the Future of the ICJ as a Human Rights Court

Professor Sicilianos: Professor d'Argent, a brief question: how do you assess the contribution of recent public interest litigation to the protection of human rights? Do you think that the International Court of Justice is gradually evolving into a human rights court? After all, roughly half of the cases currently pending before the ICJ concern human rights in one form or another.

Professor d'Argent: I will answer your question, but let me begin by recalling something my good friend Philippe Sands likes to say about advisory opinions: *if you ask a stupid question, you get a stupid answer*. The same caution applies more broadly—you have to be careful what you ask for. Advisory opinions are, of course, about legal clarity, and legal clarity is inherently political. But that is not the end of litigation; very often, it is only the beginning. That, in my view, is one of the great functions of advisory opinions today.

Let me also respond to my friend Professor Mbengue, who rightly asked: *whose* public interest? Let me simply set out the facts, and you may draw your own conclusions.

Yes, the OIC was involved, but behind the case stood one individual: Abubacarr Tambadou, the Gambia's Minister of Justice, formerly a legal officer at the ICTR and educated in London. During a visit to Bangladesh organised by the OIC—which, naturally, is concerned with the fate of Muslims worldwide—he effectively represented his country's Foreign Minister. The Gambia itself, a small country, had only recently emerged from more than two decades of grave human rights abuses under a previous regime.

While visiting Cox's Bazar, the world's largest refugee camp, Tambadou listened, through interpreters, to accounts from Rohingya refugees that reminded him, with chilling familiarity, of the evidence he had encountered while working at the Rwanda Tribunal: people shot in the back, women systematically raped, children having their throats cut, and babies thrown into fires. He returned profoundly shaken. At the same time, the UN Fact-Finding Mission was concluding that genocide may well have occurred. Step by step, he reported his findings to the OIC, became its principal advocate on the issue, and eventually the organisation concluded: *we trust your assessment—proceed*.

Meanwhile, at my own firm, a partner, Arsalan Suleman—an American of Pakistani descent who had previously served at the US State Department and maintained longstanding contacts within the OIC—established contact with Tambadou, and together we developed the case.

Allow me to quote Tambadou's own words before the Court, because, unusually, counsel did not draft this speech for him. He wrote it himself, entirely capable of articulating his own position before the Court:

> *"Mr President, honourable Members of the Court, as Attorney General of the Republic of the Gambia, I stand before you today as agent in a dispute with the State of Myanmar—but not a conventional one that this Court is accustomed to. I stand before you to awaken the conscience of the world, and to arouse the voice of the international community. In the words of Edmund Burke: the only thing necessary for the triumph of evil is that good men do nothing."*

Those were his opening words.

Here, then, was a small African State taking seriously an instrument that is, in many respects, the product of European history. Indeed, before approaching the Gambia, we had sought other governments willing to invoke the Genocide Convention, but they declined. So, quite simply: thank you, the Gambia.

To me, this also illustrates the legacy of institutions—and perhaps explains why institutions themselves are sometimes attacked, precisely because they carry such legacies. Tambadou had worked at the ICTR. He recognised genocide when he encountered it, and, twenty years later, happened to find himself in Cox's Bazar. That, too, is part of what this case teaches us.

Certainly, the OIC is concerned with the fate of Muslims worldwide, and the Gambia is both a Muslim-majority State and a member of the OIC. There is nothing improper about that. What is genuinely remarkable is the political courage and commitment to the rule of law displayed by a small African State that had nothing material to gain—and nothing to lose—but was profoundly moved by what its Minister of Justice had personally witnessed. The fact that an international court was prepared to entertain such a case is, in itself, something quite extraordinary. Those are the facts; you may judge them as you wish.

Turning to your broader question, I do indeed believe that many of the cases currently before the Court concern human rights in one way or another.

Take, for example, our Armenia cases. Strictly speaking, they are not public interest litigation, but many of the Armenian victims do not even possess Armenian nationality.

Many of those expelled from Nagorno-Karabakh continue to refuse Armenian citizenship, and tens of thousands remain in Yerevan without formalising their status. I was in Yerevan only last week discussing precisely this issue with a UN coordinator.

Or consider the case of *Lithuania v. Belarus*, which I recently brought on Lithuania's behalf. It too contains a significant human rights dimension, centred on Article 16 of the Migrant Smuggling Protocol, although not because the victims are Lithuanian nationals. Migrants were pushed across the border by Belarus, returned by Lithuania, and then beaten upon their return by Belarusian authorities. Before that, they had been accommodated—rather curiously—in State-owned hotels, transported by bus to the border, and gently escorted across after Belarusian border guards cut through the border fence, only to be assaulted once they re-entered Belarus.

If the Gambia case ultimately fails, I fear there will be very little appetite for future litigation of this kind. Jean-Marc referred earlier to the CEDAW case, as well as to the proceedings under the 1953 Convention on the Political Rights of Women against Afghanistan. I do not know precisely where that case currently stands, but I regard it as symptomatic of a broader trend. In an international environment increasingly driven by political bargaining rather than principle, States appear less willing than before to undertake litigation of this nature. Such cases require a degree of political commitment that seems, at present, unfashionable.

A further issue of fundamental importance will be the Court's approach to reparations in the Gambia case, assuming that genocide and State responsibility are established, and, crucially, who will receive those reparations. This formed a central part of my pleadings in January, and I believe it will be equally central to the broader significance of the judgment.

Undoubtedly, it would be historic if the Court were, for the first time, to find a State internationally responsible for genocide under the Genocide Convention. But the equally important question is: what follows? If these are truly human rights cases, their outcomes must produce tangible benefits for victims, rather than merely symbolic victories.

Even now, it is striking how much it has meant to those Rohingya who travelled to The Hague—representing only a tiny fraction of the many thousands affected—simply to have their voices heard. That alone constitutes a meaningful form of justice. They will return to their communities in Cox's Bazar carrying that experience with them, and, ultimately, that is one of the most important purposes these cases are capable of serving.

Reaffirming Human Rights Amid Geopolitical Crisis

Professor Sicilianos: Thank you very much for that answer. Once again, I would like to bring in a Global South perspective, and, more broadly, the perspective of less powerful States. Professor Mbengue, a closely related question: how can international human rights law be reaffirmed in the context of the current geopolitical crisis? We have seen the cases concerning Gaza, Ukraine, and others come before the ICJ. Against this backdrop, how can international human rights law be reaffirmed?

Professor Mbengue: Thank you very much, Mr President.

I am very pleased that I managed to provoke my dear friend Professor d'Argent into sharing that more personal account of The Gambia and Myanmar. I must confess that I did so deliberately, because I am genuinely proud of The Gambia. I am from Senegal myself, and The Gambia and Senegal are, in many respects, one country. Senegal is also a member of the OIC, so we share that sense of pride. My intention was simply to encourage Professor d'Argent to tell the fuller story. Thank you for doing so.

Turning to your question, how can we reaffirm human rights law in the midst of today's geopolitical crises?

Throughout today's discussions, we have heard about one important shift already under way: the movement from an injury-based regime towards an attention-based regime. Many of the cases discussed today are, at their core, about securing attention—about ensuring that victims are heard. I believe, however, that a further, more profound transformation is now required: a shift from a rights-protection-oriented regime towards a more risk-governance-oriented one.

The ecosystem within which human rights now operate has fundamentally changed. We are confronted simultaneously with the climate crisis, biodiversity loss, air pollution, global health challenges, the risks associated with artificial intelligence, and recurring economic shocks. Because this broader ecosystem is increasingly characterised by global risk, our human rights framework must also become more responsive to risk governance. I cannot yet say precisely what such an approach would entail in practice, but I do not believe, Professor Tigroudja, that human rights courts and treaty bodies have reached the limits of what they are capable of delivering.

One area in particular demands far greater attention: the global economic crisis. We live in an era of economic shocks, trade wars, and economic coercion, yet the human rights community has, frankly, been surprisingly absent from these debates. Reaffirming human

rights therefore requires us first to rethink the sociology of human rights law—that is, the professional profile of human rights lawyers and the way in which they engage with these emerging crises.

I think here, for example, of David Boyd, the former UN Special Rapporteur on the right to a healthy environment, who published in 2023 a report entitled *Paying Polluters: The Catastrophic Consequences of Investor-State Dispute Settlement for Environmental and Climate Action*. Here was a human rights lawyer drawing States' attention to the risks posed by investment arbitration and investment treaties. Before the publication of that report, investment and trade agreements were scarcely discussed at the climate COP meetings. It genuinely changed the conversation. In other words, changing the sociology of those who practise human rights law—and broadening the issues with which they engage—can itself contribute to reaffirming human rights.

A second avenue concerns what I would describe as the geopolitics of human rights. Here, I suspect Professor Thouvenin and I would largely agree. We urgently need to narrow the divide between Global South and Global North narratives, particularly regarding economic coercion.

We cannot simply invoke human rights as a justification for violating human rights. Trade sanctions, economic sanctions, and other unilateral coercive measures all have profound consequences for the enjoyment of rights such as access to water, food, and affordable energy. How, then, can we genuinely claim to be defending the universality of human rights when parts of the human rights community simultaneously defend the legality of such measures in the name of promoting human rights or preserving international peace and security? There is a genuine contradiction here.

If we truly seek universality—a genuinely universal normative framework for human rights—we also need what I would call universal rhetoric. Consider, for example, sanctions imposed on individuals affecting their property rights, as distinct from sanctions directed against States. It is highly significant that one part of the international community regards such measures as lawful under the law of State responsibility, while another considers them unlawful. As international lawyers, we bear a collective responsibility to reduce this divide. There cannot be one conception of human rights for the Global South and another for the Global North. Double standards are incompatible with genuine universality.

Allow me to conclude with one recent example.

Only last week, the United Nations General Assembly adopted a resolution concerning the operationalisation of the ICJ's advisory opinion on climate change. Eight States voted against the resolution—the usual suspects, if I may put it that way—and the United States was among them. Reading the United States' explanation of vote, one argument in particular caught my attention. The representative objected to the resolution's reference to "the human rights of peoples", arguing that this terminology was inconsistent with international law because, in the view of the United States, human rights belong only to individuals and never to groups or peoples.

Really?

I shall leave it there. Thank you.

Do Advisory Opinions Actually Improve Respect for Human Rights?

Professor Sicilianos: Thank you very much for those reflections. Narrowing the gap between Global North and Global South perspectives on human rights is indeed a critically important issue. Let me now turn once again to Professor Thouvenin, and to the subject of advisory opinions. Do advisory opinions, in the end, have a positive effect in strengthening respect for human rights? Once again, I pose the question somewhat provocatively.

Professor Thouvenin: Thank you very much. Since you asked for telegraphic answers, let me take my fellow panellists' contributions as my starting point.

First, a brief comment to Professor Tigroudja. I believe that the Inter-American Court misunderstood the direction in which Colombia was heading with its request for an advisory opinion. I shall explain privately what the real concern was, but it was not the concern that subsequently arose before the ICJ.

Turning to the remarks of Professor Mbengue, I would also distinguish between the issue of "functional jurisdiction", which he mentioned, and the matter presently under discussion—they are entirely different questions. Likewise, Professor Mbengue, at one point you appeared to equate unilateral sanctions with countermeasures. They are not the same. If we are speaking of countermeasures properly so called, that is one issue; unilateral sanctions are quite another.

Let me now address advisory opinions more generally, perhaps on a slightly more pessimistic note.

For academics, advisory opinions are, of course, wonderful. They provide excellent material for teaching international law, and we are invariably pleased to have them. The more difficult question is what actually happens afterwards.

Take the advisory opinion on Western Sahara. It is an excellent opinion on the right to self-determination and has proved extremely valuable both for the development of human rights law and for subsequent litigation. Yet if we look at developments on the ground, did the Sahrawi people ultimately exercise their right to self-determination after Morocco declared the territory to be its "Southern Provinces"? The answer is, unfortunately, not really.

The three advisory opinions concerning Palestine are similarly of immense importance. It was genuinely remarkable to witness so many States appearing before the Court in support of Palestine—perhaps the most striking feature of the proceedings as a whole. Yet those proceedings, too, were not followed by the outcome many had hoped for. On the ground, people continue to suffer, without the protection that the relevant institutions were intended to provide.

The advisory opinion on Chagos presents a rather different picture. That opinion was genuinely remarkable and even produced tangible legal consequences. Most notably, a Special Chamber of ITLOS, in the context of separate proceedings, recognised what came close to according binding—or at least dispute-resolving—effect to the ICJ's advisory opinion. That represented a particularly significant development.

Yet, in the end, political reality intervened. President Trump simply said: stop. The United Kingdom had been expected to implement the consequences of the advisory opinion, but Washington insisted that it required the military base on Diego Garcia for operations elsewhere in the world. As a result, the matter remains unresolved.

Looking further back, we may recall the South West Africa advisory opinions of 1949, 1954, 1955, and 1971. Ultimately, the situation was resolved with the end of apartheid. Should we attribute that outcome to the advisory opinions? Perhaps, particularly in the case of the 1971 opinion. However, that opinion had been specifically requested by the Security Council, making it rather different from most advisory proceedings before the Court.

Finally, let me turn to climate change.

Many States—including the United States—have sought simply to disregard the Court's advisory opinion. Nevertheless, as Professor Tigroudja suggested earlier, the real relay mechanism may lie elsewhere, namely with domestic judges. In a very real sense, I believe the opinion was written with them in mind.

The Court appears to have recognised that the effective implementation of international law cannot depend exclusively on political actors, who are often unfamiliar with its finer legal details. It must also speak directly to domestic courts, which are capable of giving practical effect to its reasoning within national legal systems.

I very much hope that this advisory opinion will indeed contribute to addressing the climate crisis, which remains one of the most serious challenges facing the international community today.

Is Universal Human Rights Protection a Realistic Goal?

Professor Sicilianos: Thank you very much for this optimistic concluding observation—one that I very much share. Let me now turn to our final question, which returns us to the overarching theme of today's event: reinforcing universality. Professor Tigroudja, drawing on your experience at the United Nations and your knowledge of the principal regional human rights systems, do you believe that a strengthening of the universality of human rights is genuinely achievable? If so, under what conditions?

Professor Tigroudja: Thank you. I shall be brief, particularly because I largely agree with what Professor Mbengue has already said about universality. Let me begin, however, by responding to his proposal for a more risk-governance-oriented approach.

To be clear, when we discussed the limits of the classical human rights instruments in Berlin, the conclusion was certainly not that the human rights community should ignore the challenges you have identified. Quite the contrary. We also heard valuable perspectives from representatives of other human rights monitoring bodies, and I fully share your assessment that these emerging challenges must be addressed.

Turning more specifically to advisory jurisdiction, Professor Ducoulombier referred this morning to the experiences of both the African Court and the Inter-American Commission. It is interesting to observe how, where an international court or body lacks a substantial contentious docket, its advisory jurisdiction can itself become an important means of sustaining its institutional relevance.

This is precisely the situation of the African Court today. It currently has an advisory opinion on climate change pending, and another request concerning mass human rights violations under the African Charter is likewise in the pipeline. The advisory function therefore serves not merely to clarify the law but also to maintain the Court's role within the broader human rights system.

Returning to the broader question of universality, I fully agree with Professor Mbengue that, particularly in Europe, there remains a fundamental misunderstanding of what universality actually entails. There is often an implicit assumption that universality requires everyone to embrace an identical conception of human rights, family, dignity, and related values, leaving little or no room for diversity or pluralism. In my view, that is precisely the mistake.

We pay a significant price for this misunderstanding. During the work of the Human Rights Committee, when engaging with non-Western States, we repeatedly hear the same response: *"This is simply a Western conception of human rights."* Universality is not something that exists automatically. It must be continuously constructed through dialogue, and that process must be free from stereotypes.

When engaging with Asian, African, or Latin American States, we should not approach the discussion on the assumption that we, as Europeans, already possess the definitive understanding of morality and human values. Such an attitude is incompatible with genuine universality.

That said, I do believe that encouraging developments are beginning to emerge.

Allow me to conclude with what I consider to be an excellent example of systemic integration operating horizontally—from South to North. You may recall the example I mentioned during our African civil society meeting in Mozambique. It deserves equal attention, although it has largely been overshadowed by the recent climate change advisory opinion.

I am referring to Advisory Opinion No. 31 of the Inter-American Court of Human Rights concerning the right to care. Although the American Convention on Human Rights does not expressly protect such a right, the Court relied upon the African principle of Ubuntu—the value of solidarity—as an interpretative source for defining States' obligations. Last year, the Court treated this African concept as a genuine interpretative principle, notwithstanding its absence from the text of the Convention itself.

What I find particularly striking is that this approach has not generated any significant opposition from Latin American States.

For me, this is precisely what universality should mean. It also poses an important challenge to the European Court of Human Rights. I am not aware of any instance in which the European human rights system has, in turn, drawn upon African jurisprudence in the same way. It is time for this dialogue between South and North to become genuinely reciprocal—not only for the African and Inter-American Courts to draw inspiration from the European system, but for the European Court to engage more actively with jurisprudential developments originating in other regional systems as well.

The Ubuntu example is, in my view, an excellent and genuinely encouraging illustration of what meaningful systemic integration can achieve.