

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION



The **YEAR IN REVIEW**

AN ANNUAL SURVEY OF INTERNATIONAL LEGAL DEVELOPMENTS AND
PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

VOLUME 59 | 2025

International Legal Developments Year in Review: 2024

Introduction

KIMBERLY Y. W. HOLST AND ROSA KIM

Americas

Canada

Food, Agriculture, and Cannabis

Latin America and Caribbean

Contracts, Transportation, Energy & Environment

International Contracts

International Energy and

Environmental Law

International M&A and Joint Ventures

International Transportation

Corporate & Supply Chain

International Antitrust

International Tax

Cyber, Art & Technology

International Art and Cultural

Heritage Law

Dispute Resolution

International Criminal Law

International Litigation

Diversity & Inclusion

Women's Interest Network

Young Lawyers Interest Network

Europe/Eurasia/Middle East/Africa

Africa

Eurasia

European Law

Middle East

Finance

International Finance & Securities

Human Rights & Corporate Social Responsibility

International Family Law

International Human Rights

Legal Practice, Ethics & Delivery of Legal Services

Lawyers Abroad

Trade, International Organizations & Regulatory Practices

Export Controls and Economic

Sanctions

International Animal Law

National Security Law

United Nations and International
Organizations

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Article Submissions: Articles are submitted by the ABA/ILS Committees, and should not exceed 7,000 words (including footnotes). Text and footnotes should be double-spaced. Internal citations and footnotes must conform to the most recent edition of *The Bluebook: A Uniform System of Citation* (Harvard Law Review Association). The Journal does not accept unsolicited submissions nor does it consider articles that have been or are to be published elsewhere.

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THE YEAR IN REVIEW

2025 • Volume 59

CONTENTS

International Legal Developments Year in Review: 2024

Introduction	Kimberly Y. W. Holst	1
	Rosa Kim	

Americas

Canada.	Courtney Aucoin	5
	Jacob Mantle	
	Brigid Martin	
	William Pellerin	
	Chelsea Rubin	
Food, Agriculture, and Cannabis	Susan Burns	21
	Cristina Busquets	
	Viviana Cervieri	
	Lukasz Chwalkowski	
	Ignacio Gillmore	
	Jakub Gladkowski	
	Danilo Grigoli	
	Monica Sanchez Garita	
	Natuska Traña	
	Jesus Urbina	
Latin America and Caribbean.	Francisca Eyzaguirre Fontaine	43
	José Francisco Mafla	
	Francisco Ugarte Larraín	

Contracts, Transportation, Energy & Environment

International Contracts	Andrew M. Danas	51
	Anders Forkman	
	Stuti Murarka	
	Niloofar Zarei Henzaki	
International Energy and Environmental Law	Ricardo Alves Silva	65
	Mariana Ardizzzone	
	José Diogo Sampaio	
	Joseph Arop	
	Sara Frazão	
	Luís Miranda	
International M&A and Joint Ventures	Kristina Akalovich	75
	Clara Bernadi	
	Masanori Bito	
	Hector Caires	
	Anton Dzhuplin	
	Joyl Gondim	

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

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Junya Horiki
Cecilia Li
Rita Li
Ignacio Montoya
Rangel M. Raul
Amruta Rawate Patil
Fedor Trofimov
Lauren E. Wyszomierski
Vanessa Zhang

International Transportation	James Border	97
	Andrew M. Danas	
	Andrew Dezjot	
	Joshua DuBois	

Corporate & Supply Chain

International Antitrust	Julia Braga	113
	Roy Chowdhury	
	Neil Cuninghame	
	Miguel del Pino	
	Santiago Del Rio	
	Jacqueline Downes	
	Lisl Dunlop	
	Shigeyoshi Ezaki	
	Fiona Garside	
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	Aman Singh Sethi	
	Sarah Spangler	
	Jiyeon Song	
	Eun Sun Jang	
	Peter Wang	
	Kiyoko Yagami	
	Yizhe Zhang	
International Tax	Vittoria Di Gioacchino	139
	Daan Jongbloed	
	Alba I. Joubert Pereira	
	Michiel Schul	
	John Shoemaker	
	Ted Theissen	

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

Cyber, Art & Technology

International Art and Cultural Heritage Law Kate Fitz Gibbon 155

Dispute Resolution

International Criminal Law Marisa R. Bassett 167
Joseph Oleshangay
Shadi Sadr
Fadjar Schouten-Korwa
International Litigation Jonathan I. Blackman 187
Carmine D. Boccuzzi, Jr.
Phillip B. Dye, Jr.
Theodore J. Folkman
Ari MacKinnon
Mark E. McDonald
Jose F. Sanchez

Diversity & Inclusion

Women's Interest Network Júlia Alcalá 201
Minwei Dai
Megan Dill
Nurhan Elgamil
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Danielle Irvine
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Camila Sanchez
Isabella Schwarze
Madeline Snider
Patricia A. Teunisse
Aina Serret Trancoso
Catherine van Kampen
Cole Vick
Elizabeth M. Zechenter
Young Lawyers Interest Network Lakeisha Barnes 221

Europe/Eurasia/Middle East/Africa

Africa Joseph Arop 225
Yerro Bah
Benson Bandawe
Elizabeth Barad
Anne Bodley
Sherri Marie Carr
Nourhan Fahmy
Sara Frazão
Angela Gallerizzo
Laverne Lewis Gaskins
Hawi Furgassa Hirpa
Tyler Holmes
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	Maame Ekua Otenewa Oduro	
	José Sampaio	
	Michael Shayo	
	Ricardo Alves Silva	
	Awoke Mitku Tamrat	
	Tania Tossa	
Eurasia.....	Maxim Dogonkin	255
	Kimberly Reed	
European Law.....	James Henry Bergeron	275
	William B. Bierce	
	Pascale Longuet	
	Liz Mosler	
	Luigi Pavanello	
Middle East.....	Harry Baumgarten	289
	Hani Jawabrah	
	Michael Kene	
	Michael H. Traison	
 Finance		
International Finance & Securities	Paola Bianchi	297
	Jere Onnela	
 Human Rights & Corporate Social Responsibility		
International Family Law.....	Melissa A. Kucinski	309
International Human Rights	Daniel L. Appelman	329
	Alexander Ehrle	
	Linda S. Murnane	
	Carlos de Miguel Perales	
	Austin J. Pierce	
	Sara Sandford	
	Wendy Taube	
	Constance Z. Wagner	
	Elizabeth M. Zechenter	
 Legal Practice, Ethics & Delivery of Legal Services		
Lawyers Abroad	Joy Momin	355
 Trade, International Organizations & Regulatory Practices		
Export Controls and Economic Sanctions.....	Andrea T. Al-Attar	363
	Tony Busch	
	Noah Brozinsky	
	Danielle Chu	
	Paul J. Coyle	
	Aida Dismondy	
	Geoffrey M. Goodale	
	Michael H. Huneke	
	Jeremy Ilouliau	
	Matthew Kronby	

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Grant D. Leach
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Tiauna N. Mathieu
Emily Mikes
Jacqueline Schaeffer
Amelia Schmidt
Trevor G. Schmitt
David Tannenbaum
Lawrence Ward
Lauren E. Wyszomierski

International Animal Law	Daina Bray	389
	Paula Cardoso	
	Marcia Condoy Truyenque	
	Yolanda Eisenstein	
	Giulia Malerbi	
	Jamie McLaughlin	
	Gabriela Rudge Machado	
	Joan Schaffner	
	PJ Smith	
	Michael Swistara	
National Security Law	James Henry Bergeron	409
	Geoffrey Goodale	
	Raul Rangel Miguel	
	Jonathan Meyer	
United Nations and International Organizations	Renee Dopplick	415
	Vayuna Gupta	
	Mandalena Prelashi	
	Samantha Renshaw	

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International Legal Developments Year in Review: 2024

KIMBERLY Y. W. HOLST AND ROSA KIM*

This publication, *International Legal Developments – The Year in Review: 2024*, presents a survey of important legal and political developments in international law that occurred during 2024. The volume consists of articles from twenty-six committees of the American Bar Association Section of International Law, whose members live around the world and whose committees report on a diverse range of issues and topics that have arisen in international law over the past year. Not every development in international law can be included in this volume, and the omission of a particular development should not be construed as an indication of insignificance. The Section of International Law committees draft their articles under extremely strict guidelines that limit the number of words that each committee has: approximately 7,000 words, including footnotes. Within these guidelines, committee members contribute submissions that describe the most significant developments in their substantive practice area or geographic region. In some cases, non-section members who have specialized knowledge or expertise in an area may also be contributing authors.

Committee chairs and committee editors solicited the contributing authors for each committee article. The committee editors, who are identified in each article, had the daunting task of keeping their authors' collective contributions within the tightly controlled word limit. They made difficult decisions regarding what to include and what to cut. After the committee editors did their work, Professors Kimberly Holst and Rosa Kim, the Co-General Editors, formatted and organized the twenty-six committee submissions and then transmitted the articles to an amazing team of Deputy Editors who performed substantive and technical reviews on the articles. Once the Deputy Editors completed their work and returned the articles, the Co-General Editors reviewed each article again before sending them to the diligent student editors at the Dedman School of Law at Southern Methodist University in Dallas, Texas. A.B. Steinberg, the past Editor-in-Chief of *The International Lawyer*, Taylor Rosenbleeth, the *Year in Review* Managing Editor for this past academic year, and Elliott R. Jacobsen, the current Editor-in-Chief for this upcoming academic year, performed superlatively in their respective roles. They supervised

* Professor Kimberly Y. W. Holst teaches at the Sandra Day O'Connor College of Law, Arizona State University and Professor Rosa Kim teaches at Suffolk University Law School in Boston, Massachusetts.

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2 THE YEAR IN REVIEW

[VOL. 59]

an outstanding editorial team whose individual names you can read in the masthead for this volume. These intrepid students checked the sources cited and reviewed each article line by line and word by word. Professor Beverly Caro Duréus, who was invaluable to the publication of this volume, served again this year as the Faculty Executive Editor, and worked closely with the Co-General Editors and with the student editors. We also appreciate the support received from Joan Schaffner, the Publications Officer for the ABA Section of International Law, the Division Chairs, and the other leaders of the ABA Section of International Law. Because of all the work that goes into producing the Year in Review, the final product is a cogent overview of international law events during 2024. Readers interested in a particular substantive or geographic area are encouraged to read not only this year's summary, but also those from earlier years.

The Co-General Editors work with an incredibly dedicated team of volunteer Deputy Editors from around the world. The Deputy Editors include many law professors who specialize in legal writing, international law, and topics related to foreign and international law. The ABA Section of International Law is extremely fortunate to have such a skilled, dedicated, and generous team of Deputy Editors, many of whom have now served for several years. Here is the list of the Deputy Editors who worked on articles this year, with apologies to anyone omitted from the list. Together with the lists from previous years, we believe that we have the strongest editorial team of any journal in the world. We thank all our committee editors named in the individual articles and our Deputy Editors named here for the generous contributions of their time and talent.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

INTERNATIONAL LEGAL DEVELOPMENTS: 2024

3

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Canada

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This article surveys significant legal developments in Canada in 2024.

I. 2024 Canadian Trade Update

The year 2024 was marked by international tension and uncertainty as governments, including Canada's, looked inward, adopting unilateral protectionist trade policies. Two principal trends are evident in Canadian trade policy. First, the measures signal further regression from rules-based trade. Second, Canada increased regulatory compliance regimes. While some of these have non-protectionist purposes, such as complying with international treaties, mitigating the risk of sanctions evasion, and combatting forced labour in supply chains, others reflect the trend toward protectionism.

The central purpose of this piece is to provide a "lookback" on developments in Canadian trade law and policy in 2024. The re-election of President Trump is a harbinger of significant trade tension between Canada and the United States, so we briefly consider a look at 2025 as well.

A. PROTECTIONISM AND UNILATERAL MEASURES

1. *Canadian Surtaxes on Chinese Imports*

After a brief public consultation, Canada unilaterally imposed "surtaxes" (i.e., tariffs) on Chinese-origin goods, including a 100 percent surtax on electric vehicles and a twenty-five percent surtax on Chinese-original steel and aluminum.¹ Canada

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1. See China Surtax Order, SOR/2024-187, (Can.); See Can. Border Servs. Agency, *Customs Notice 24-36, China Surtax Order (2024) – Steel and Aluminum*, GOV'T OF CAN. (Oct. 18, 2024), <https://www.cbsa-asfc.gc.ca/publications/cn-ad/cn24-36-eng.html> [https://perma.cc/U93Y-MJZE] [hereinafter *China Surtax: Steel and Aluminum*]; see Can. Border Servs. Agency, *Customs Notice 24-32: China Surtax Order (2024) – Electric Vehicles*, GOV'T OF CAN. (Sept. 27, 2024), <https://www.cbsa-asfc.gc.ca/publications/cn-ad/cn24-32-eng.html> [https://perma.cc/D8F9-QN35] [hereinafter *China Surtax: Electric Vehicles*].

is currently considering further surtaxes on goods related to “critical manufacturing sectors.”² These sectors include goods considered critical to achieving Canada’s carbon emission and net-zero goals, including lithium-ion batteries and parts, semiconductors, solar panels, and critical minerals.³

2. *Chinese Retaliatory Measures*

In response to Canada’s actions, the Chinese government commenced a World Trade Organization (WTO) challenge against Canada.⁴ Simultaneously, the Chinese government initiated an anti-dumping investigation into Canadian canola imported into China.⁵ China’s anti-dumping investigation into Canadian canola is perceived to be retaliation for Canada’s unilateral surtaxes.⁶ Canola represents an important export market for both Canadian farmers and agricultural commodity traders.⁷ Further, Chinese retaliation should be expected if Canada proceeds with additional surtaxes on “critical manufacturing” goods.

3. *Blanket U.S. Tariffs*

President Trump has promised that he will impose tariffs of twenty-five percent or more on Canadian-origin goods imported into the United States from Canada.⁸ Such broad-based tariffs, if levied, would have significant consequences for the Canadian economy.⁹ This is because Canadian and the United States supply chains are heavily integrated, especially in the automotive sector, and because of Canada’s export dependence on the U.S. market.¹⁰ During President Trump’s previous term, the United States similarly levied unilateral tariffs on Canadian steel and aluminum

2. *Consultations on Potential Surtaxes in Response to Unfair Chinese Trade Practices in Critical Manufacturing Sectors*, GOV’T OF CAN.: DEPT. OF FIN. CAN. (Oct. 11, 2024), <https://www.canada.ca/en/departement-finance/programmes/consultations/2024/consultations-on-potential-surtaxes-in-response-to-unfair-chinese-trade-practices-in-critical-manufacturing-sectors.html> [https://perma.cc/E72M-32WB].

3. *Id.*

4. *Complaint by China, Canada — Measures on Certain Products of Chinese Origin*, WORLD TRADE ORG. (Sept. 6, 2024), https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds627_e.htm [https://perma.cc/AX9D-E57H].

5. Heidi Dancho, *Canola Council of Canada Statement on China’s Anti-dumping Investigation on Canola Seed Imports*, CANOLA COUNCIL CAN. (Sept. 3, 2024), <https://www.canolacouncil.org/news/canola-council-of-canada-statement-on-chinas-anti-dumping-investigation-on-canola-seed-imports/> [https://perma.cc/K7B4-5GJE].

6. *Id.*

7. *Industry Overview*, CANOLA COUNCIL CAN., <https://www.canolacouncil.org/about-canola/industry/> [https://perma.cc/R49H-LTAQ] (last visited Mar. 20, 2025).

8. Costas Pitas, *Trump Vows New Canada, Mexico, China Tariffs that Threaten Global Trade*, REUTERS (Nov. 26, 2024), <https://www.reuters.com/world/us/trump-promises-25-tariff-products-mexico-canada-2024-11-25/> [https://perma.cc/DU3G-2E4S].

9. Alison Auld, *Ask an Expert: How Will U.S. Tariffs on Steel and Aluminum Impact Canada’s Economy?*, DALHOUSIE UNIV.: DAL NEWS (Feb. 11, 2025), <https://www.dal.ca/news/-/2025/02/11/trump-steel-aluminum-canada-tariffs-trudeau.html> [https://perma.cc/M598-NLMA].

10. *Id.*

products.¹¹ Canada responded in kind with dollar-for-dollar countermeasures that targeted not only the United States steel and aluminum products, but also economically or politically sensitive U.S. products, such as orange juice from Florida and felt-tipped pens from Wisconsin, which includes the congressional district of the former Republican U.S. Speaker of the House.¹²

B. CUSTOMS – CARM IMPLEMENTATION, VALUE FOR DUTY CHANGES, AND NEW REPORTING REQUIREMENTS

1. CARM Implementation

The implementation of the Canada Border Services Agency's (CBSA's) Assessment and Revenue Management (CARM) system was the number one priority for the CBSA in 2024 and consumed much of the attention and resources of the trade community in Canada.¹³ CARM is a multi-year initiative to replace certain existing customs and enforcement systems with a modernized online solution for the accounting, payment, and collection of duties and certain taxes.¹⁴

While initially planned to “go-live” in May 2024, implementation was delayed to October after united opposition from the trade community and a scathing report from Canada's Parliamentary Standing Committee on International Trade that pointed out significant flaws, gaps, and unanswered questions with the system.¹⁵

As of October 21, 2024—after years of delays—CARM became the official and only system of record for declaring imported goods and the payment of duties and taxes.¹⁶ While some issues were resolved over the course of 2024, and despite CBSA boasts as to system functionality, many issues remain unresolved, including security for duties and taxes, the filing of corrections and adjustments from pre-

11. Brenda Swick & Carly Walter, *President Trump Announces Tariffs on Canadian Steel and Aluminum, Canada Quickly Retaliates with Tariffs on U.S. Imports: An Unprecedented Trade War Looms*, DICKINSON WRIGHT (June 2018), <https://www.dickinson-wright.com/news-alerts/president-trump-announces-tariffs> [https://perma.cc/8BAM-VG7M].

12. *Id.*

13. *Canada Border Services Agency's Assessment Revenue Management System (CARM)*, INT'L TRADE ADMIN. (Oct. 30, 2024), <https://www.trade.gov/market-intelligence/canada-border-services-agencys-assessment-revenue-management-system-carm#:~:text=Through%20CARM%2-C%20the%20CBSA%20will,financial%20security%20for%20their%20shipments> [https://perma.cc/62DV-7SMH].

14. Can. Border Servs. Agency, *CARM: Assess and Pay Duties and Taxes on Imported Commercial Goods*, GOV'T OF CAN. (Jan. 23, 2025), <https://www.cbsa-asfc.gc.ca/services/carm-gcra/menu-eng.html> [https://perma.cc/6A9Q-QLE5].

15. THE CBSA ASSESSMENT AND REVENUE MANAGEMENT SYSTEM: AN INTERIM REPORT, CAN. HOUSE COMMONS 4, 5 (2024), <https://www.ourcommons.ca/Content/Committee/441/CIIT/Reports/RP13042197/ciitrp17/ciitrp17-e.pdf> [https://perma.cc/8R23-KEGD].

16. Can. Border Servs. Agency, *Importers Now Benefiting from New Accounting System for the Collection of Duties and Taxes for Commercial Goods*, GOV'T OF CAN. (Oct. 21, 2024), <https://www.canada.ca/en/border-services-agency/news/2024/10/importers-now-benefiting-from-new-accounting-system-for-the-collection-of-duties-and-taxes-for-commercial-goods.html> [https://perma.cc/MC37-MMDK].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

8 THE YEAR IN REVIEW

[VOL. 59]

and post-CARM time periods, and system errors.¹⁷ These issues continue to disrupt trade flows and have even resulted in goods being turned away at the border.¹⁸

2. *Value for Duty Changes Still in Limbo*

The significant proposed changes to Canada's Value for Duty Regulations, that we first described in our 2023 update, remain outstanding and continue to cause uncertainty for importers in Canada.¹⁹ The proposed changes include a new "last sale" rule for customs valuation.²⁰ Under this rule, the value of imported goods for duty purposes would be based on the last sale in the series of transactions that results in the importation of the goods.²¹ As a result, the value, and the total amount of customs duty and tax imposed, will increase.²²

As we previously described, the stated purpose of these proposed amendments is to "level the playing field" between Canadian and non-resident importers.²³ This remains the CBSA's assertion.²⁴ The CBSA continues to believe that non-resident importers unfairly benefit by being able to declare a lower acquisition cost from an earlier transaction outside Canada.²⁵

While the CBSA undertook consultations respecting the proposed changes to Canada's Value for Duty Regulations in early 2023, the CBSA took until May 2024 to publish feedback.²⁶ Industry comments were nearly uniformly opposed to the proposed changes, with many industry participants noting that the amendments will increase the cost of imported goods for consumers and may also be inconsistent with Canada's international trade obligations.²⁷ The CBSA has publicly indicated that it is working with regulatory drafters to address issues raised in the consultations.²⁸

17. The Can. Press, *Importers Brace for Launch of New Portal to Collect Duties*, CTV NEWS (Oct. 21, 2024), <https://www.ctvnews.ca/business/article/importers-brace-for-launch-of-new-portal-to-collect-duties/> [<https://perma.cc/26SK-MXJK>].

18. *Id.*

19. See *Valuation for Duty Regulations*, SOR/86-792 (Can.).

20. Julia Webster & Jacqueline Rotondi, *Canada Proposes "Last Sale" Rule in Relation to Customs Valuation*, BAKER MCKENZIE: GLOB. COMPLIANCE NEWS (June 6, 2023), https://www.globalcomplianceupdate.com/2023/06/06/https-www-internationaltradeupdate-com-2023-06-02-canada-proposes-last-sale-rule-in-relation-to-customs-valuation_06022023/ [<https://perma.cc/9KNQ-84BC>].

21. *Id.*

22. *Id.*

23. Can. Border Servs. Agency, *What We Heard Report: Proposed Regulatory Amendments to the Valuation for Duty Regulations*, GOV'T OF CAN. (May 8, 2024), <https://www.cbsa-asfc.gc.ca/agency-agence/consult/consultations/pramrp/report-rapport-eng.html> [<https://perma.cc/4L3R-H9NA>].

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

3. *New Steel Reporting Requirements*

Beginning November 5, 2024, Canada will require importers of certain steel products to report the steel's "country of melt and pour."²⁹ Canada defines the "country of melt and pour" as the "location where rate steel is first produced in a steel-making furnace in a liquid state and then poured into its first solid shape."³⁰ Importers will be unable to claim the benefit of general import permits eighty and eighty-one, required for importation of certain carbon and specialty steel products, if country of melt and pour information is not provided.³¹

Country of melt and pour reporting follows Canada's prior 2020 decision to add steel and aluminum products to Canada's import control list.³² Canada amended its import control list to include steel and aluminum products pursuant to an understanding with the United States regarding the latter's Section 232 tariffs.³³

C. CANADIAN AD/CVD PROCEEDINGS AND A NEW "MARKET WATCH" PROGRAM

While in 2023 we wrote that the pace of anti-dumping (AD) and countervailing duty (CVD) proceedings (both new investigations and reviews) had slowed somewhat, this trend reversed in 2024, as the CBSA initiated four new AD/CVD investigations (wire rod from China, Egypt, and Vietnam; high protein content pea protein from China; concrete reinforcing bar from Bulgaria, Thailand, and the United Arab Emirates; and sucker rods from Argentina, Brazil, and Mexico)³⁴ and two country-wide re-investigations (gypsum board from the United States and oil country tubular goods from Chinese Taipei, India, Indonesia, South Korea, Thailand, Turkey, and Vietnam).³⁵ The results of the latter will also be used to update surrogate values for seamless carbon or alloy steel oil and gas well casing and certain oil country tubular goods originating from China.³⁶ The CBSA also

29. *Country of Melt and Pour Updates for Steel Imports*, GOV'T OF CAN.: INT'L TRADE & INV. (Nov. 7, 2024), https://www.international.gc.ca/trade-commerce/controls-contrôles/steel-acier/country_melt_pour-pays_source_coulage.aspx [<https://perma.cc/2ZBD-BRYZ>].

30. *Id.*

31. *Id.*

32. Jesse Goldman et. al., *The Burden of Protectionism: Outlook for Canadian Trade*, OSLER (Dec. 5, 2024), <https://www.osler.com/en/insights/reports/2024-legal-outlook/the-burden-of-protectionism-outlook-for-canadian-trade/> [<https://perma.cc/BR8J-4L5F>].

33. *Id.*

34. Can. Border Servs. Agency, *Dumping and Subsidy Investigations*, GOV'T OF CAN. (Feb. 11, 2025), <https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html> [<https://perma.cc/YMY3-4KTL>].

35. Can. Border Servs. Agency, *Dumping and Subsidy Re-investigations*, GOV'T OF CAN. (Jan. 31, 2025), <https://www.cbsa-asfc.gc.ca/sima-lmsi/ri-re/menu-eng.html> [<https://perma.cc/YGY3-LKNE>].

36. Can. Border Servs. Agency, *Notice of Initiation of a Re-investigation: Oil Country Tubular Goods* (OCTG 2024 RI), GOV'T OF CAN. (June 27, 2024), <https://www.cbsa-asfc.gc.ca/sima-lmsi/ri-re/octg2024/octg2024-ni-eng.html> [<https://perma.cc/K4LL-NWG2>].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

10 THE YEAR IN REVIEW

[VOL. 59]

initiated nine expiry reviews³⁷ and nineteen normal value and export price reviews.³⁸

Notably, the CBSA initiated an investigation into allegations that Vietnam is circumventing a Canadian International Trade Tribunal ruling on the dumping and subsidizing of container chassis from China.³⁹ This is the first such anticircumvention investigation in Canada.⁴⁰

Finally, in the latter part of 2024, the CBSA began a new “Market Watch” program that it hopes will streamline administrative reviews and enforcement of AD/CVD measures.⁴¹ The program will proactively monitor market dynamics and trends that may cause values (including prospective normal values, export prices, and amounts of subsidy) to become inaccurate, and allow CBSA to determine whether a review and update of these values is warranted.⁴² The new program will also include a “tiered” administrative process intended to determine the level of review necessary to update values.⁴³ In November, the CBSA initiated its first two “administrative reviews” under the new program (with respect to large line pipe from China and Japan and upholstered domestic seating from China and Vietnam).⁴⁴

D. FREE TRADE AGREEMENTS

While Canada is still engaged in introducing or modernizing free trade agreements (FTAs) with Indonesia and the Association of Southeast Asian Nations

37. Can. Border Servs. Agency, *Dumping and Subsidy Expiry Reviews*, GOV'T OF CAN. (Feb. 12, 2025), <https://www.cbsa-asfc.gc.ca/sima-lmsi/er-rre/menu-eng.html> [https://perma.cc/7W75-P24B].

38. Can. Border Servs. Agency, *Normal Value Reviews*, GOV'T OF CAN. (Jan. 29, 2025), <https://www.cbsa-asfc.gc.ca/sima-lmsi/up/menu-eng.html> [https://perma.cc/RN5Y-SY4D].

39. Can. Border Servs. Agency, *Notice of Initiation of Anti-circumvention Investigation: Container Chassis (CC 2024 AC)*, GOV'T OF CAN. (Nov. 25, 2024), <https://www.cbsa-asfc.gc.ca/sima-lmsi/ac/cc2024/cc2024-ni-eng.html> [https://perma.cc/3XUZ-JFXG].

40. See *id.*

41. See Can. Border Servs. Agency, *Canada Border Services Agency 2024 to 2025 Departmental Plan*, GOV'T OF CAN. (Feb. 29, 2024), <https://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/rpp/2024-2025/full-plan-plan-complet-eng.html> [https://perma.cc/9N3C-3QCJ]; Borçelik Çelik Sanayi Ticaret, *The CBSA Is Initiating an Investigation into Concerns Regarding Dumping of Corrosion-Resistant Steel Sheet from Türkiye*, GOV'T OF CAN. (Dec. 5, 2024), <https://www.canada.ca/en/border-services-agency/news/2024/12/the-cbsa-is-initiating-an-investigation-into-concerns-regarding-dumping-of-corrosion-resistant-steel-sheet-from-turkiye-by-borcelik-celik-sanayi-ti.html> [https://perma.cc/C7AY-QCGQ]; Can. Custom Brokerage, *New CBSA Market Watch Unit Will Monitor and Update Trade Remedy Measures*, AXCESS (Apr. 23, 2024), <https://axcessintl.com/en/new-cbsa-market-watch-unit-will-monitor-and-update-trade-remedy-measures/> [https://perma.cc/Z8W8-YT5M].

42. See Chapter 7: *Protecting Canadians and Defending Democracy*, DEPT. FIN. CAN. (Apr. 16, 2024), <https://www.budget.canada.ca/2024/report-rapport/chap7-en.html#:~:text=Budget%C2%A02024%20proposes%20to%20provide%20%2410.5,ensure%20greater%20transparency%20and%20market%20predictability> [https://perma.cc/32BV-QRPY].

43. See *id.*

44. Can. Border Servs. Agency, *Dumping and Subsidy Administrative Reviews*, GOV'T OF CAN. (Feb. 17, 2025), <https://www.cbsa-asfc.gc.ca/sima-lmsi/ar-ra/menu-eng.html> [https://perma.cc/CXY8-J2ZX].

(ASEAN), talks with the United Kingdom (U.K.) collapsed in 2024.⁴⁵ The existing Canada-United Kingdom Trade Continuity Agreement expired at the end of 2023.⁴⁶ In January 2024 British negotiators walked away from talks to negotiate a long-term bilateral trade deal.⁴⁷ Talks have not resumed since and the process appears to be indefinitely paused.⁴⁸

Canada is, however, still in the process of negotiating other FTAs.⁴⁹ On November 15, 2024, Prime Minister Trudeau announced the conclusion of negotiations on a trade deal with Indonesia.⁵⁰ The agreement is expected to be signed by early next year.⁵¹ The government also continues to negotiate an FTA with the ASEAN bloc; a seventh round of negotiations was held in Kuala Lumpur in 2024, and the governments have stated they are aiming to conclude negotiations by 2025.⁵² The negotiation of these two agreements forms part of Canada's 2022 Indo-Pacific Strategy.⁵³

Finally, Canada and Ukraine agreed to modernize their existing FTA.⁵⁴ The revised FTA was signed and entered into force on July 1, 2024.⁵⁵

E. DISPUTES UNDER CANADA'S FREE TRADE AGREEMENTS AND SOFTWOOD LUMBER DEVELOPMENTS

Two long-standing trade disputes continued in 2024.⁵⁶ First, in October 2024 the government of New Zealand announced that it triggered mandatory negotiations under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) concerning its dairy dispute with Canada.⁵⁷ Under

45. Janyce McGregor & John Paul Tasker, *U.K. Walks away from Trade Talks with Canada*, CBC (Jan. 25, 2024, 1:55 PM), <https://www.cbc.ca/news/politics/canada-uk-trade-cheese-1.7094817> [<https://perma.cc/L57U-KS6J>].

46. *See id.*

47. *See id.*

48. *See id.*

49. *Canada-Indonesia Comprehensive Economic Partnership Agreement*, PRIME MINISTER OF CAN.: JUSTIN TRUDEAU (Nov. 16, 2024), <https://www.pm.gc.ca/en/news/backgrounders/2024/11/16/canada-indonesia-comprehensive-economic-partnership-agreement> [<https://perma.cc/2WMT-J5QK>].

50. *Id.*

51. *Canada-ASEAN Free Trade Agreement*, GOV'T OF CAN. (Dec. 6, 2024), <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/asean-anase/fta-ale/negotiations-negociations.aspx> [<https://perma.cc/LJP7-4V7D>].

52. *Id.*

53. *Canada's Indo-Pacific Strategy*, GOV'T OF CAN. (Sept. 3, 2024), <https://www.international.gc.ca/transparency-transparence/indo-pacific-indo-pacifique/index.aspx> [<https://perma.cc/6L72-YBC2>].

54. Glob. Aff. Can., *Modernized Canada-Ukraine Free Trade Agreement Enters into Force*, GOV'T OF CAN. (July 1, 2024), <https://www.canada.ca/en/global-affairs/news/2024/07/modernized-canada-ukraine-free-trade-agreement-enters-into-force.html> [<https://perma.cc/BQ4H-U6FK>].

55. *Id.*; *Canada-Ukraine Free Trade Agreement Implementation Act*, S.C. 2024, c. 3 (Can.).

56. *See* Hon. Todd McClay, *New Zealand Takes Next Step in Dairy Dispute with Canada*, BEEHIVE.GOV'T.NZ (Oct. 18, 2024), <https://www.beehive.govt.nz/release/new-zealand-takes-next-step-dairy-dispute-canada#:~:text=In%20September%20last%20year%2C%20a,Zealand%20to-%20request%20formal%20negotiations> [<https://perma.cc/3U5A-6D99>].

57. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

12 THE YEAR IN REVIEW

[VOL. 59]

the CPTPP dispute resolution process, negotiations were required to begin within fifteen days of notification.⁵⁸ New Zealand initially launched a claim against Canada under the CPTPP in 2022 arguing that Ottawa's implementation of dairy tariff rate quotas violated the CPTPP rules by improperly allocating a portion of dairy tariff rate quotas to domestic firms.⁵⁹ Five other CPTPP members (Australia, Japan, Mexico, Peru, and Singapore)⁶⁰ have joined New Zealand in the dispute.⁶¹

Second, the softwood lumber conflict—the longest running trade disagreement between Canada and the U.S. —persisted in 2024.⁶² In January 2024, Canada formally filed a request for a panel to review the U.S. International Trade Commission's decision to maintain duty orders on Canadian softwood lumber products.⁶³ The Commission determined that material injury is likely to recur should the orders be allowed to expire.⁶⁴ The challenge will proceed under Chapter 10 of the Canada-United States-Mexico Agreement (CUSMA).⁶⁵ A month later, in February 2024, the United States announced the preliminary results of its fifth administrative review.⁶⁶ The amended final results—including duty rates applicable to Canadian importers—were published in September 2024.⁶⁷ Canada announced that it will challenge the results of the fifth administrative review;⁶⁸ a CUSMA panel will be convened to hear that challenge.⁶⁹

58. See *id.*

59. See *id.*

60. *Current Disputes*, N.Z.: FOREIGN AFF. & TRADE (n.d.), <https://www.mfat.govt.nz/en/-/trade/trade-law-and-dispute-settlement/current-wto-disputes> [https://perma.cc/9CN4-PSXB].

61. See *id.*

62. Glob. Aff. Can., *Canada Challenges U.S. Decision to Maintain Softwood Lumber Duties*, GOV'T OF CAN. (Jan. 17, 2024), <https://www.canada.ca/en/global-affairs/news/2024/01/canada-challenges-us-decision-to-maintain-softwood-lumber-duties.html> [https://perma.cc/UT6P-QBFV].

63. *Id.*

64. *Id.*

65. *Id.*

66. Glob. Aff. Can., *Statement by Minister Ng on U.S. Department of Commerce Preliminary Review of Duties on Canadian Softwood Lumber*, GOV'T OF CAN. (Feb. 1, 2024), <https://www.canada.ca/en/global-affairs/news/2024/02/statement-by-minister-ng-on-us-department-of-commerce-preliminary-review-of-duties-on-canadian-softwood-lumber.html> [https://perma.cc/54QS-SVSH].

67. Glob. Aff. Can., *Statement by Minister Ng on U.S. Department of Commerce Fifth Review of Duties on Canadian Softwood Lumber*, GOV'T OF CAN. (Aug. 13, 2024), <https://www.canada.ca/en/global-affairs/news/2024/08/statement-by-minister-ng-on-us-department-of-commerce-fifth-review-of-duties-on-canadian-softwood-lumber.html> [https://perma.cc/QK3C-J7ML].

68. Glob. Aff. Can., *Canada Further Challenges U.S. Softwood Duties*, GOV'T OF CAN. (Sept. 9, 2024), <https://www.canada.ca/en/global-affairs/news/2024/09/canada-further-challenges-us-softwood-lumber-duties.html> [https://perma.cc/86JF-DSQE].

69. See *id.*

F. ECONOMIC SANCTIONS CONTINUE TO EXPAND

In 2024, Canada expanded existing sanctions, notably Russia-related, and imposed new ones.⁷⁰ Canada designated dozens of additional individuals pursuant to the Special Economic Measures (Russia) Regulations, and enacted new prohibitions with respect to the purchase, import or acquisition of certain diamonds mined or produced in Russia.⁷¹ Canada also introduced new sanctions regimes with respect to Guatemala, Hamas Terrorist Attacks (targeting Hamas terrorists), and Extremist Settler Violence (targeting Israelis).⁷²

Canada's business and legal communities have continued to seek more meaningful guidance on sanctions compliance.⁷³ Unfortunately, most guidance to date has been anodyne and has conspicuously avoided addressing the many thorny interpretive issues posed by the wording used in the key legal instruments.⁷⁴ In April 2024, however, the government attempted to heed these calls for guidance by updating its "Frequently Asked Questions" (FAQs) page to provide new information on Canada's autonomous economic sanctions.⁷⁵ While these FAQs do address some of the sanctions questions, they also include interpretations of certain legal concepts (including "ownership" and "control") that introduce new ambiguities instead of the desired certainty.⁷⁶

Amendments to Canada's Proceeds of Crime (Money Laundering) and Terrorist Financing Act were also enacted that authorize the Minister of Public Safety and Emergency Preparedness to create an administrative monetary penalty scheme to promote compliance with reporting requirements for imports and exports.⁷⁷ The government also signaled its intention to establish a Trade Transparency Unit

70. See Special Economic Measures (Guat.) Regulations, SOR/2024-23 (Can.); Special Economic Measures (Hamas Terrorist Attacks) Regulations, SOR/2024-18 (Can.); Special Economic Measures (Extremist Settler Violence) Regulations, SOR/2024-91 (Can.).

71. See Special Economic (Russ.) Regulations, SOR/2014-58 (Can.).

72. See Special Economic Measures (Guat.) Regulations, SOR/2024-23 (Can.); Special Economic Measures (Hamas Terrorist Attacks) Regulations, SOR/2024-18 (Can.); Special Economic Measures (Extremist Settler Violence) Regulations, SOR/2024-91 (Can.).

73. See Special Economic Measures (Guat.) Regulations, SOR/2024-23 (Can.); Special Economic Measures (Hamas Terrorist Attacks) Regulations, SOR/2024-18 (Can.); Special Economic Measures (Extremist Settler Violence) Regulations, SOR/2024-91 (Can.).

74. See Special Economic Measures (Guat.) Regulations, SOR/2024-23 (Can.); Special Economic Measures (Hamas Terrorist Attacks) Regulations, SOR/2024-18 (Can.); Special Economic Measures (Extremist Settler Violence) Regulations, SOR/2024-91 (Can.).

75. See *Canadian Sanctions – Frequently Asked Questions* (n.d.), GOV'T OF CAN.: CAN. & THE WORLD, https://www.international.gc.ca/world-monde/-inter-national_relations-relations_internationales/sanctions/faq.aspx [https://perma.cc/4AN2-KDZJ].

76. See *id.*

77. See Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17 (Can.) (for more information on the amendments see *Canada Gazette, Part 1, Volume 158, Number 27: Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Money Services Business Registration)*, CAN. GAZETTE (Jul. 6, 2024), <https://www.gazette.gc.ca/rp-pr/p1/2024/2024-07-06/html/reg3-eng.html> [https://perma.cc/5M76-FZGD]).

within the CBSA and to create enhanced powers to combat trade-based financial crimes.⁷⁸

Lastly, in 2024, Canada continued to align its export controls with those of the U.S., the U.K., and members of the European Union, including those involving quantum computers and advanced semiconductors.⁷⁹

G. FORCED LABOUR AND SUPPLY CHAIN DILIGENCE

Canada's Fighting Against Forced Labour and Child Labour in Supply Chains Act came into force in 2024.⁸⁰ This legislation introduced a reporting requirement for certain in-scope entities and expanded Canada's existing import ban on goods made with forced labour.⁸¹

On October 16, 2024, the government announced that it is continuing these efforts and that it intends to strengthen enforcement of the existing import ban.⁸² The government is undertaking consultations and has proposed several new measures, including the creation of a supply chain "minimum traceability" process, the publication of a list of high-risk goods, and the imposition of reverse onus provisions that would require importers to furnish information about the supply chain of certain imports.⁸³ The consultation also proposes that, when there is a finding that goods were made using forced labour, the importer should be responsible for the payment of all costs associated with the detention, removal, abandonment, and forfeiture of the goods.⁸⁴

Although Canada has stated that it wishes to introduce new legislation (including in the 2024 Budget), it nevertheless seems likely that the existing requirements will remain in force for at least the next reporting cycle in 2025. Indeed, on November 15, 2024, Public Safety Canada released new guidance to assist entities and government institutions in preparing for the 2025 reporting cycle.⁸⁵

78. See *id.*

79. Notice to the Exporters No. 1129 – Amendment to the Export Control List: Quantum Computing and Advanced Semiconductors, GOV'T OF CAN.: INT'L TRADE & INV. (June 19, 2024), <https://www.international.gc.ca/trade-commerce/controls-controles/notices-avis/1129.aspx> [<https://perma.cc/TM3E-9KZM>].

80. *Forced Labour in Canadian Supply Chains* (n.d.), PUB. SAFETY CAN., <https://www.public-safety.gc.ca/cnt/cntrng-crm/frcd-lbr-cndn-sply-chns/index-en.aspx> [<https://perma.cc/8RD2-92-ZP>] (last visited Mar. 20, 2025).

81. *Id.*

82. News Release, Glob. Aff. Can., Minister Ng Announces Launch of Public Consultations on Canada's Ban on Import of Goods Produced by Forced Labour (Oct. 16, 2024), <https://www.canada.ca/en/global-affairs/news/2024/10/minister-ng-announces-launch-of-public-consultations-on-canadas-ban-on-import-of-goods-produced-by-forced-labour.html> [<https://perma.cc/K5E6-PS5Q>].

83. See *id.*

84. *Id.*

85. See *Forced Labour in Canadian Supply Chains*, PUB. SAFETY CAN., *supra* note 80; *Guidance for Entities*, PUB. SAFETY CAN. (Nov. 15, 2024), <https://www.publicsafety.gc.ca/cnt/cntrng->

II. Trade Compliance Landscape in 2024: Canada's Approach to Forced Labour, Sanctions, and Surtaxes

As the overview above describes, 2024 brought significant developments in Canadian international trade policy. Alongside stricter reporting and compliance obligations, Canadian businesses experienced new policy initiatives to improve labour standards, transparency, and human rights within supply chains; reporting obligations relating to sanctions against Russian entities; and new surtaxes on Chinese imports.

As Canada continues to bolster its trade relationships globally and its economic resiliency domestically, it has also aligned with many of its allies in imposing stricter trade compliance obligations to address the rapidly evolving dynamics of international supply chains.⁸⁶

This section takes a close look at three significant developments in Canadian trade compliance over the past year: (A) Canada's forced labour and child labour in supply chains regimes and the close of the first reporting deadline in May 2024; (B) The adoption of key amendments to the Canadian sanctions regime by adding reporting obligations, enforcement mechanisms for sanctions evasion, and compliance requirements for required entities; and (C) Changes to Canada's surtax regime on Chinese-made electric vehicles, steel and aluminum products, and possible future surtaxes on goods related to critical manufacturing sectors.⁸⁷

A. CANADA'S FIGHT AGAINST FORCED LABOUR AND CHILD LABOUR IN SUPPLY CHAINS

The close of 2024 marks almost one year since the Fighting Against Forced Labour and Child Labour in Supply Chains Act (Supply Chains Act) came into effect.⁸⁸ The Supply Chains Act requires certain government institutions and private entities to publicly report their efforts to prevent and reduce risks of forced labour or child labour in their supply chains.⁸⁹ Canada joined the United States, Australia, and the U.K.⁹⁰ in adopting such legislation. The Supply Chains Act forms part of the Government's efforts to track and prevent goods linked to exploitative labour practices from entering the Canadian market.⁹¹ It also affirms

crm/frcd-lbr-cndn-spply-chns/prpr-rprt-en.aspx [https://perma.cc/VR5W-YTWE]; *Guidance for Government Institutions*, PUB. SAFETY CAN. (Nov. 15, 2024), <https://www.public-safety.gc.ca/cnt/cntrng-crm/frcd-lbr-cndn-spply-chns/prpr-rprt-gvt-en.aspx> [https://perma.cc/KN36-2JBL].

86. See *Guidance for Entities*, PUB. SAFETY CAN., *supra* note 85.

87. See *id.*; *Forced Labour in Canadian Supply Chains*, PUB. SAFETY CAN., *supra* note 80.

88. See *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, S.C. 2023, c. 9 (Can.).

89. *Id.* § 3.

90. *Modern Slavery Act 2015*, c. 30 (U.K.); *California Transparency in Supply Chains Act*, Cal. Civ. Code § 1714.43 (2010); *Uyghur Forced Labor Prevention Act*, Pub. L. No. 117-78, 135 Stat. 1525 (2021); *Modern Slavery Act 2018* (Cth) (Austl.).

91. PUBLIC SAFETY CANADA, 2024 ANNUAL REPORT TO PARLIAMENT ON THE FIGHTING AGAINST FORCED LABOUR AND CHILD LABOUR IN SUPPLY CHAINS ACT (2024) (44th Parl., 3rd Sess.).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

16 THE YEAR IN REVIEW

[VOL. 59]

a common international commitment to uphold fair trade and respect human rights in supply chains.⁹²

As of the first reporting deadline on May 31, 2024, Public Safety Canada (Public Safety) received a total of 5,795 reports. Reporting entities continued to submit reports even after the deadline, and the number rose to 6,303 submissions by July 31, 2024.⁹³ Using the information submitted in these reports, Public Safety published its 2024 Annual Report to Parliament on the Supply Chains Act (the Annual Report).⁹⁴ The Annual Report highlights reported activities that carry the risk of forced labour and child labour as well as measures taken by Canadian entities and government institutions to address such issues in global supply chain networks from 2023 to 2024.⁹⁵ Entities identified risks relating to raw materials, the broader sector or industry in which the entity operates, direct suppliers, and geographic locations of operations, among others.⁹⁶ The most common steps taken by reporting entities to address forced labour and child labour concerns include internal assessments, due diligence policies, general prohibitions against forced and child labour, and increased supplier monitoring.⁹⁷

Despite the measures reportedly taken to mitigate labour and human rights violations, most reporting entities either identified gaps in their processes for assessing forced labour and child labour or reported no assessment processes in place in 2023.⁹⁸ Reports for 2024, due in May 2025, will reveal whether reporting entities engaged with more promising mechanisms for assessing these risks throughout 2024.⁹⁹

A separate prohibition on the importation of goods made of child labour and forced labour also applies. Since 2020, Canada has legislatively implemented an import ban under the Canada-United States-Mexico Agreement (CUSMA), making it illegal to import goods made wholly or in part by forced labour in domestic markets.¹⁰⁰ Although enforcement actions have begun, Canada lacks an enforcement mechanism with sufficient teeth to effectively uphold the purpose of the ban.

The enforcement framework falls short in comparison to other countries, such as the U.S., where the prohibition on imported goods made with forced or child labour is actively enforced by border authorities.¹⁰¹ Under the United States' "reverse onus" model, reporting entities must be able to prove that their products

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. 2024 ANNUAL REPORT, *supra* note 91.

98. *Id.*

99. *Id.*

100. *Id.*

101. Uyghur Forced Labor Prevention Act, Pub. L. No. 117-78, 135 Stat. 1525 (2021).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

CANADA 17

are free from forced labour.¹⁰² In contrast, Canada has had little success in enforcing the prohibition.¹⁰³

Both stakeholders and U.S. politicians have criticized Canada for lagging behind the United States in enforcing the forced labour ban.¹⁰⁴ Notably, while the United States has stopped thousands of imports suspected of being produced with forced labour, Canada has detained very few.¹⁰⁵ The Canadian government has, however, recently initiated public consultations on implementing stricter enforcement measures.¹⁰⁶

The proposed measures include requirements similar to those in the United States, including obligations for certain qualifying entities to publish a list of “goods at risk of forced labour” in their supply chains and the imposition of a “reverse onus” as outlined above.¹⁰⁷ The measures also suggest a collaborative information collection and enforcement network with the United States and Mexico to prevent transshipments.¹⁰⁸

The impact that the proposed measures may have on mitigating forced and child labour in Canadian supply chains is yet to be determined. Given the possibility of legislative changes, Canadian businesses should continue developing internal diligence processes and maintaining communications with foreign suppliers to demonstrate their goods are not tied to forced or child labour.

B. NAVIGATING SANCTIONS COMPLIANCE CHANGES IN 2024

February 2024 marked two years since Russia’s invasion of Ukraine.¹⁰⁹ In response, the Government of Canada announced expansions to its economic sanctions regime.¹¹⁰

In Canada, the regime contains various pieces of legislation that regulate dealings with sanctioned persons and entities, including the United Nations Act, Special

102. *Id.*

103. Alexander Panetta, *U.S. Politicians Press Canada in Writing on Anti-forced Labour Failure*, CBC (Sep. 25, 2024), <https://www.cbc.ca/news/world/us-letter-canada-forced-labour-1.7331804> [<https://perma.cc/W9HK-L5U9>].

104. *Id.*

105. *Id.*

106. Glob. Aff. Can., *Share Your Views: Public Consultations on Measures to Strengthen Canada’s Import Ban on All Goods Mined, Manufactured, or Produced Wholly or in Part, by Forced Labour*, GOV’T OF CAN. (Nov. 15, 2024), <https://international.canada.ca/en/global-affairs/consultations/trade/2024-10-17-cusma-forced-labour> [<https://perma.cc/MB5A-6S9Q>].

107. *Id.*

108. See Glob. Aff. Can., *Statement by Minister Ng Announces Launch of Public Consultations on Canada’s Ban on Import of Goods Produced by Forced Labour*, GOV’T OF CAN. (Oct. 16, 2024), <https://www.canada.ca/en/global-affairs/news/2024/10/minister-ng-announces-launch-of-public-consultations-on-canadas-ban-on-import-of-goods-produced-by-forced-labour.html> [<https://perma.cc/K6PB-X8H3>].

109. Glob. Aff. Can., *Statement Marking 2 Years since Russia’s Full-scale Invasion of Ukraine*, GOV’T OF CAN. (Feb. 24, 2024), <https://www.canada.ca/en/global-affairs/news/2024/02/statement-marking-2-years-since-russias-full-scale-invasion-of-ukraine.html> [<https://perma.cc/8YF5-L9FM>].

110. See *id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

18 THE YEAR IN REVIEW

[VOL. 59]

Economic Measures Act (SEMA), the Justice for Victims of Corrupt Foreign Officials Act, the Export and Imports Permit Act, the Criminal Code, and the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA).¹¹¹

Bill C-59, the Fall Economic Statement Implementation Act, received royal assent in June, bringing the following additions to Canada's sanctions regime under the PCMLTFA framework: (i) Creating new border seizure and forfeiture powers for Canada Border Services Agency officials; (ii) Imposing sanctions evasion reporting for certain institutions (banks, securities, dealers, and life insurance companies); (iii) Establishing administrative monetary penalties for non-compliant entities; and (iv) Adding certain record-keeping requirements applicable to those same institutions.¹¹²

Failure to report could now result in fines up to CAD 2,000,000 and/or imprisonment up to five years.¹¹³ The proposed changes are intended to address concerns about the regime's perceived lack of transparency evident in, for example,¹¹⁴ the Government's quiet delisting of individuals over the past year.

More broadly, additional sanctions were imposed on Russian individuals and entities under SEMA in 2024.¹¹⁵ Canada's current sanctions campaign, which covers twenty-four countries,¹¹⁶ requires careful diligence by Canadian businesses with international business and supply chains moving forward.

Many Canadian businesses were left unsure of how to navigate these sweeping changes and how they affect existing contracts with ties to sanctioned entities or individuals.¹¹⁷ In response, Global Affairs Canada updated its FAQs page on Canadian Sanctions in March 2024, providing some clarity for entities on their sanctions obligations.¹¹⁸ The Government provided guidance on expectations for businesses when engaging (or disengaging) with designated entities,¹¹⁹ as well as

111. Glob. Aff. Can., *Minister Joly Announces Additional Sanctions in Response to Russia's Full-scale Invasion of Ukraine*, GOV'T OF CAN. (Feb. 23, 2024), <https://www.canada.ca/en/global-affairs/news/2024/02/minister-joly-announces-additional-sanctions-in-response-to-russias-full-scale-invasion-of-ukraine.html> [<https://perma.cc/76EC-BHCP>]; see Glob. Aff. Can., *Canadian Sanctions Legislation*, GOV'T OF CAN. (Jun. 26, 2024), https://www.international.gc.ca/world-monde/-international_relations-relations_internationales/sanctions/legislation-lois.aspx [<https://perma.cc/4KAD-VY32>].

112. Proceeds of Crime (Money Laundering) and Terrorist Financing Act, R.S.C. 2000, c. 17, § 75(1) (Can.), as amended by Bill C-59, 2024.

113. *Id.*

114. *Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime Strategy 2023-2026*, DEP'T FIN. CAN. (2023), <https://www.canada.ca/content/dam/fin/programs-programmes/fsp-psf/rs-st/rs-sr-eng.pdf> [<https://perma.cc/K3Z3-8CB8>].

115. See Special Economic Measures (Russ.) Regulations, SOR/2024-32 (Can.); Special Economic Measures (Russ.) Regulations, SOR/2024-40 (Can.); Special Economic Measures (Russia) Regulations, SOR/2024-39 (Can.).

116. *Current Sanctions Imposed by Canada*, GOV'T OF CAN. (July 5, 2024), https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/current-actuelles.aspx [<https://perma.cc/2N36-T2PC>].

117. See Glob. Aff. Can., *Canada Further Challenges U.S. Softwood Duties*, *supra* note 68.

118. *Id.*

119. *Id.*

various scenarios to illustrate how the sanctions regime can impact business activities, financial transactions, and existing contractual obligations.¹²⁰

As Canada's sanctions regime continues to evolve alongside those of the United States and the U.K., Canadian businesses should remain informed of changes to avoid regulatory and criminal liability. It remains to be seen whether these changes will result in a more aggressive enforcement regime by the Government.

C A SERIES OF SURTAXES AGAINST CHINA: NEW SURTAXES BRING NEW REPORTING AND VALUATION OBLIGATIONS

Most recently, the Government joined the United States in imposing a series of surtaxes on certain Chinese products.¹²¹ The surtaxes notably include a 100 percent surtax on Chinese-made electric vehicles and a twenty-five percent surtax on steel and aluminum products.¹²² The surtaxes were implemented to respond to China's unfair trade practices, to address domestic industry concerns, and to improve protections in critical sectors such as transportation and manufacturing.¹²³

Canada also held consultations in the fall of 2024 on proposals to implement a surtax on other goods, such as batteries and battery parts, semiconductors, solar products, and critical minerals.¹²⁴ Consultation submissions are currently under Government review.¹²⁵

Importers of products subject to the surtaxes should be prepared for more stringent reporting requirements under the Customs Tariff.¹²⁶ Importers will be required to provide proof of origin for commercial and casual goods that are listed and declare the surtax when completing a Commercial Accounting Declaration through the Canadian Border Services Agency's Assessment and Revenue Management system.¹²⁷ Importers will also likely be subjected to increased examination at the time of importation.¹²⁸

120. *Id.*

121. Can. Border Servs. Agency, *China Surtax: Electric Vehicles*, *supra* note 1; Can. Border Servs. Agency, *China Surtax: Steel and Aluminum*, *supra* note 1.

122. Can. Border Servs. Agency, *China Surtax: Electric Vehicles*, *supra* note 1; Can. Border Servs. Agency, *China Surtax: Steel and Aluminum*, *supra* note 1.

123. Can. Border Servs. Agency, *China Surtax: Electric Vehicles*, *supra* note 1; Can. Border Servs. Agency, *China Surtax: Steel and Aluminum*, *supra* note 1.

124. *Consultations on Potential Surtaxes in Response to Unfair Chinese Trade Practices in Critical Manufacturing Sectors*, GOV'T OF CAN.: DEP'T OF FIN. CAN., (Oct. 11, 2024), <https://www.canada.ca/en/department-finance/programs/consultations/2024/consultations-on-potential-surtaxes-in-response-to-unfair-chinese-trade-practices-in-critical-manufacturing-sectors.html> [<https://perma.cc/3DJZ-ZX9U>].

125. *Id.*

126. Can. Border Servs. Agency, *China Surtax: Electric Vehicles*, *supra* note 1; Can. Border Servs. Agency, *China Surtax: Steel and Aluminum*, *supra* note 1.

127. Can. Border Servs. Agency, *China Surtax: Electric Vehicles*, *supra* note 1; Can. Border Servs. Agency, *China Surtax: Steel and Aluminum*, *supra* note 1.

128. Can. Border Servs. Agency, *China Surtax: Steel and Aluminum*, *supra* note 1.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

20 THE YEAR IN REVIEW

[VOL. 59]

In response to Canada's surtaxes, China has launched an anti-dumping investigation into Canadian exports of canola products.¹²⁹ This investigation could have significant effects on Canadian agricultural exporters and global food supply chains.¹³⁰

With no sign of Chinese imports slowing in the near future, it is likely that additional surtaxes or other trade measures may be considered to protect Canadian domestic markets. Canada may also impose additional surtaxes to align itself with the United States as trade tensions continue to evolve.

D. NEXT STEPS: CANADA'S TRADE POLICY IN 2025

Canada, like many countries globally, is adapting its international trade policies to respond to evolving geopolitics, national security and economic security concerns, and heightened labour and social standards. In addition, it is likely that a second term for President Donald Trump will bring more changes and challenges for businesses in Canada.

Canada is closing 2024 with more stringent policies and obligations for transparency in supply chains, sanctions, and surtaxes on imports. It remains to be seen whether Canada will continue its more protectionist and interventionist trade policy and whether 2025 will bring stricter enforcement. Canadian and foreign businesses looking to engage in Canada's markets going forward should remain apprised of Canada's domestic and foreign policy priorities and developments.

129. *Statement from Minister MacAulay on China's Anti-dumping Investigation*, GOV'T OF CAN.: AGRIC. & AGRI-FOOD CAN. (Sept. 9, 2024), <https://www.canada.ca/en/agriculture-agri-food/news/2024/09/statement-from-minister-macaulay-on-chinas-anti-dumping-investigation.html> [<https://perma.cc/8AWU-HUFA>].

130. *Id.*

Food, Agriculture, and Cannabis

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This article reviews 2024 developments in (I) hemp regulations in the United States; (II) cannabis expansion in Uruguay; (III) cannabis expansion in Costa Rica;

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(IV) medical cannabis regulations in Poland; and (V) food labeling regulations in Chile.

HEMP AND CANNABIS

I. Miller Amendment to the 2018 Farm Bill and the Cannabinoid Safety and Regulation Act

Authors: Susan Burns and Monica Sanchez Garita

A. MILLER AMENDMENT TO 2018 FARM BILL

1. *Background*

The U.S. Congress adopted the Agriculture Improvement Act of 2018² in December of that year. Commonly referred to as the 2018 Farm Bill, this act removed hemp and its derivatives with low concentrations of tetrahydrocannabinol (THC) from Schedule I of the Controlled Substances Act,³ effectively making it, once again, a legal product in the United States. The 2018 Farm Bill originally expired in September 2023 and required that Congress reauthorize it.⁴ But due to certain hurdles—such as inefficient votes, vetoes, and delays on the House floor—there were several short-term extensions, ultimately resulting in an extension until December 31, 2025.⁵ During the extension, a proposed amendment was offered by Representative Mary Miller.⁶ The Miller Amendment (the Amendment)

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Committee Editors: Monica Sanchez Garita and Nicole L. Cook.

2. See Agriculture Improvement Act of 2018, Pub. L. No. 115–334, 132 Stat. 4490 (2018).

3. Hemp Production and the 2018 Farm Bill: Hearing Before the S. Comm. on Agric., Nutrition, & Forestry, 116th Cong. 47 (2019) (statement of Amy Abernethy, Principal Deputy Comm'r, FDA, Dep't of Health & Hum. Servs.).

4. JIM MONKE ET AL., CONG. RSCH. SERV., R47659, EXPIRATION OF THE 2018 FARM BILL AND EXTENSION FOR 2025, at ii (2024).

5. *Id.*

6. The Farm, Food, & Nat'l Sec. Act of 2024, Markup of H.R. 8467, Amend. No. 35, Offered by Rep. Mary Miller, H.R. 8467, 118th Cong. (2024), <https://docs.house.gov/-meetings/AG/AG00/20240523/117371/BILLS-118-HR8467-M001211-Amdt-35.pdf> [<https://perma.cc/UX9N-GD9J>] [hereinafter H.R. 8467, Miller Amendment].

included a momentous change to the definition of hemp and the regulation of hemp-derived products in the United States.⁷ The passage of the bill with this amendment would significantly impair, if not destroy,⁸ the current legal hemp industry.

2. *Miller Amendment – Explanation*

The reason that the Amendment is so destructive to the hemp industry is because it proposes a drastic change to the definition of “hemp.”⁹ If this new definition is adopted, the net effect would be economically significant. The U.S. hemp industry is estimated at USD 1.63 billion as of 2023 and is expected to grow by 21.1% from 2024 to 2030.¹⁰ “Industrial hemp is used in over 25,000 products,”¹¹ with more than 5,000 industrial hemp producer businesses¹² in the country. Adopting the Amendment would essentially eliminate the ability to produce any of these products legally.¹³

Since the passage of the 2018 Farm Bill, hemp has been defined as “the plant *Cannabis Sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a *delta-9 tetrahydrocannabinol concentration* of not more than 0.3 percent on a dry weight basis.”¹⁴ But rather than define hemp by the percentage of delta-9 THC, the principal psychoactive component of the plant,¹⁵ the Amendment redefines hemp as a percentage of *total* THC concentration.¹⁶

Under this definition, calculation of total THC requires inclusion of not only delta-9 THC but of all isomers of the cannabinoid, including THCA—the predecessor and non-psychoactive component of THC—“delta-7, delta-8, delta-9, and delta-10, and any material compound, mixture, or preparation.”¹⁷ This means that products with any detectable level of THC, whether naturally occurring or

7. *Id.*

8. Rod Kight et al., *Yes, The Mary Miller Amendment Will Kill the Entire Hemp Industry, Including Industrial Hemp*, KIGHT ON CANNABIS (Aug. 7, 2024), <https://cannabusiness.law/yes-the-mary-miller-amendment-will-kill-the-entire-hemp-industry-including-industrial-hemp/> [https://perma.cc/7HK7-HUA4].

9. *Id.*

10. U.S. *Industrial Hemp Market Size, Share & Trends Analysis Report By Application (Animal Care, Textiles, Food & Beverages), By Product (Seeds, Fiber, Shivs), And Segment Forecasts, 2024 - 2030*, GRAND VIEW RSCH., <https://www.grandviewresearch.com/industry-analysis/us-industrial-hemp-market-report#> [https://perma.cc/7HK7-HUA4] (last visited Mar. 10, 2025).

11. *Id.*

12. *Industrial Hemp Production in the US - Number of Businesses (2005–2030)*, IBISWORLD, <https://www.ibisworld.com/united-states/number-of-businesses/industrial-hemp-production/3315/> [https://perma.cc/U5L4-9XJ2] (last visited Sept. 2024).

13. See generally Kight, *supra* note 8.

14. RENÉE JOHNSON, CONG. RSCH. SERV., R44742, *DEFINING HEMP: A FACT SHEET* 3 (2019).

15. *Id.*

16. H.R. 8467, *Miller Amendment*, *supra* note 6, at § 1(A) (emphasis added).

17. *Adult-Use Cannabis in Connecticut: How Is Total THC Calculated*, CT.GOV (Oct. 5, 2023), <https://portal.ct.gov/cannabis/knowledge-base/articles/how-is-total-thc-calculated> [https://perma.cc/AQ6R-JE87].

synthetically derived, would be excluded from the market, thus destroying the industry.¹⁸

3. *Impact on U.S. Businesses*

The Amendment's impact on hemp businesses cannot be overstated. Most companies currently produce and sell various natural and legal hemp-derived, cannabinoid-infused products that are safe for consumers.¹⁹ The most common cannabinoids are CBD, CBN, CBG, and D9-THC, all of which may be naturally derived from the hemp plant.²⁰ But as with any industry, there are some bad actors.²¹ These bad actors have presumably resulted in the Amendment, which would not only penalize bad actors but the entire hemp industry.²²

There is no demonstrated justification for elimination. The solution is not to eliminate all products from the market, as proposed by the Amendment; it is to effectively regulate and establish clear penalties for bad actors.²³

One of the most popular hemp-derived cannabinoids, namely non-psychoactive CBD, would be eliminated from the market if the Amendment were adopted.²⁴ Non-psychoactive CBD generated 55.7% of the revenue in the hemp market.²⁵ This segment was expected to grow the fastest because of "rising demand from the pharmaceutical industry."²⁶ But when these products are naturally derived from the whole plant, they also contain various levels of other cannabinoids (including

18. For example, cannabidiol (CBD) products that contain nonintoxicating amounts of tetrahydrocannabinol (THC) would arguably be eliminated from the market across the United States. See Jean Smith-Gonnell & Cole White, *The Miller Amendment: Redefining Hemp to Protect Public Safety and Fair Competition in the Cannabis Industry*, REGUL. OVERSIGHT (June 12, 2024), <https://www.regulatoryoversight.com/2024/06/the-miller-amendment-redefining-hemp-to-protect-public-safety-and-fair-competition-in-the-cannabis-industry/> [<https://perma.cc/YT2D-SCL8>].

19. Susan Burns, *The Miller Amendment Up Close: Examining Impacts on US Businesses and Consumers*, CANNABIS L. REP. (Feb. 25, 2025), <https://cannabislaw.report/the-miller-amendment-up-close-examining-impacts-on-us-businesses-and-consumers/> [<https://perma.cc/7ECH-ZMY5>].

20. *Id.*

21. For example, in Minnesota and Missouri, there have been multiple complaints of consumers getting illegal products from gas stations containing delta-8 and THC in quantities higher than the limits established by the Farm Bill. See, e.g., Christopher Miller, *What's the Deal With "Gas Station Weed?"*, STOCK LEGAL (Jul. 23, 2024), <https://www.stocklegal.com/blog/whats-the-deal-with-gas-station-weed> [<https://perma.cc/QV7R-N8VT>]; Garry Bowman, *MDH Cautions Consumers about Illegal High-dose THC Products*, MINN. DEP'T HEALTH (Dec. 13, 2023), <https://www.health.state.mn.us/news/pressrel/2023/thc121323.html> [<https://perma.cc/5C9G-2W29>].

22. Burns, *supra* note 19.

23. Bowman, *supra* note 21.

24. H.R. 8467, Miller Amendment, *supra* note 6, at § 1(A).

25. *Cannabidiol Market Size, Share & Trends Analysis Report By Source Type (Hemp, Marijuana), By Sales Type (B2B, B2C), By End-use (Medical, Personal Use), By Region, And Segment Forecasts, 2025 - 2030*, GRAND VIEW RSCH., <https://www.grandviewresearch.com/industry-analysis/cannabidiol-cbd-market> [<https://perma.cc/87V7-XHCZ>] (last visited Mar. 10, 2025).

26. See *id.*

non-intoxicating levels of THC).²⁷ These would be prohibited by the Amendment. The impact would not only be detrimental to the hemp industry; it would also have a negative impact on consumers who rely on these products and on the seed and nascent agriculture components of the hemp industry.²⁸

The Amendment would also have a substantial impact on interstate and international commerce.²⁹ “[T]he complexity associated with domestic trade creates a restrictive environment for brands and producers.”³⁰ “Many states have individual hemp programs with differing market access . . . and limitations.”³¹ Sales across state lines would likely be eliminated.³²

It would also have an impact on international companies that are planning to export hemp products.³³ To export hemp products, “all businesses must first send product samples to be registered in the relevant country.”³⁴ “The entire process takes significant time, effort, and money.”³⁵ To accomplish this, “both U.S. and foreign counsel must be retained.”³⁶ After that, “there are further registration processes and hurdles, all with associated fees.”³⁷

“The Amendment’s rigid language forces businesses to either close shop or invest huge, potentially futile, sums of money in reformulating entire product lines.”³⁸ This would be to the detriment of themselves, consumers, and the economy. The United States “must create better opportunities and outcomes for businesses and consumers” in relation to hemp products.³⁹ The authors of this section believe the United States “must lead by example and pave the way for progress, not pander to prohibitionists or their bedfellows.”⁴⁰ “The world is watching.”⁴¹

27. Danielle Dresden, *What Is the Difference Between Hemp CBD and Cannabis CBD?*, MED. NEWS TODAY (Nov. 17, 2023), <https://www.medicalnewstoday.com/articles/hemp-cbd-vs-cannabis-cbd> [https://perma.cc/BP9R-M74E].

28. Nicole Skodzinski, *Farm Bill Amendment Would ‘Devastate’ Hemp-Derived Cannabinoid Industry, Close THCA Loophole for Seed and Flower Sales*, CANNABIS BUS. TIMES (May 23, 2024), <https://www.cannabisbusinesstimes.com/hemp-derived-cannabinoids/news/15686657/farm-bill-amendment-would-devastate-hempderived-cannabinoid-industry-close-thca-loophole-for-seed-and-flower-sales> [https://perma.cc/5PAM-PKU3].

29. See Burns, *supra* note 19.

30. See *id.*

31. *Id.*

32. See *id.*

33. *Id.*

34. *Id.*

35. See Burns, *supra* note 19.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. See Burns, *supra* note 19.

B. INTRODUCTION OF A NEW FEDERAL BILL - CANNABINOID SAFETY AND REGULATION ACT

The 2018 Farm Bill placed the regulation of hemp-derived products such as food, beverages, supplements, and cosmetics under the Food, Drug, and Cosmetic Act (FDCA) and expressly preserved the FDA's authority to regulate them.⁴² Under the 2018 Farm Bill, hemp-derived edible products like gummies or infused beverages must meet all applicable FDA requirements.⁴³

Currently, FDA regulations prohibit delivery or introduction into interstate commerce "any food . . . to which THC or CBD has been added."⁴⁴ But the FDA has not promulgated regulations on hemp-derived edibles.⁴⁵ Thus, while they can be sold in the United States, only certain states have enacted regulations on hemp-derived edibles, which results in an uncertain and unregulated market.⁴⁶ This has not been beneficial for consumers or businesses. To address these concerns, on September 25, 2024, Senator Ron Wyden introduced the Cannabinoid Safety and Regulation Act (the Bill),⁴⁷ a proposed amendment to the FDCA. The Bill regulates cannabinoid products that are sold for human consumption⁴⁸—a necessary step to ensure consistency for businesses and safety for consumers.

The Bill defines "cannabinoid product" as a product that "(i) contains or purports to contain any quantity of one or more cannabinoids that are derived from hemp . . . and (ii) is intended for use in, through any route of administration, or to be applied to, the body of humans or other animals."⁴⁹ In other words, products such as food, beverages, or dietary supplements that contain naturally occurring cannabinoids such as CBD or Delta-9 THC are permitted.⁵⁰ Products that include cannabinoids derived from adult-use cannabis, i.e., marijuana, are not included within the definition and are not intended to be regulated at this time.⁵¹

The Bill proposes that the FDA create a Center for Cannabinoid Products to implement the regulations and ensure that rules and regulations are in place as prescribed by the Bill.⁵² Among the regulations that the Bill mandates is a registry system whereby facilities that manufacture, process, package, or label cannabinoid products register with the FDA and identify the products with label and packaging

42. See Hemp Production and the 2018 Farm Bill: Hearing Before the S. Comm. on Agric., Nutrition, & Forestry, *supra* note 3.

43. See *id.*

44. *FDA Regulation of Cannabis and Cannabis-Derived Products, Including Cannabidiol (CBD)*, FDA (Jul. 16, 2024), <https://www.fda.gov/news-events/public-health-focus/fda-regulation-cannabis-and-cannabis-derived-products-including-cannabidiol-cbd#whynotmore> [<https://perma.cc/UL7S-FXB8>].

45. *Id.*

46. 50 State CBD Legality, BUSCHER L. LLC, <https://www.buscherlaw.com/state-hemp-legality> [<https://perma.cc/VGW6-8UEC>] (last visited Feb. 25, 2025).

47. Cannabinoid Safety and Regulation Act, S. 5243, 118th Cong. (2024).

48. See *id.*

49. *Id.* §§ 102(a)(3)(A)(i)–(ii).

50. See *id.*

51. *Id.*

52. See *id.* § 1101.

information.⁵³ The registry aims to ensure that products are safe for human consumption and that adverse effects are eliminated or significantly reduced.⁵⁴

Another regulation is the creation of parameters on the promotion, sale, and distribution of cannabinoid products.⁵⁵ These regulations would require uniform parameters on labeling and packaging.⁵⁶ For example, the Bill states various requirements such as that the packaging of cannabinoid products must be tamper-evident and child-resistant;⁵⁷ label panels must contain a universal symbol that clearly informs consumers that the product contains cannabinoids;⁵⁸ the product must disclose the manufacturer, packer, or distributor information;⁵⁹ and the label must indicate the list of ingredients,⁶⁰ serving size, dosage, instruction for use, cannabinoid profile, and statements such as “Keep out of reach of children and pets. This product should not be consumed by women who are pregnant or nursing.”⁶¹

These requirements closely align with regulations that several states have enacted.⁶² For instance, Minnesota mandates that hemp license holders provide the same information that the Bill proposes for products meant for consumption.⁶³ The alignment of federal and state requirements highlights the industry’s push for consistency and a clear regulatory framework.

In addition, the Bill mandates that the Secretary promulgate regulations that require facilities to use good manufacturing and testing practices,⁶⁴ such as rules that require cannabinoid products be tested in a laboratory certified, accredited, or otherwise recognized by the state where the products are sold. This includes accreditation standards such as ISO 17025.⁶⁵ The purpose of implementing good manufacturing practices is to ensure that products are safe and comply with international standards to protect people’s welfare.⁶⁶

If these standards or any other requirements for manufacturing, processing, packaging, or labeling cannabinoid products are not followed, the Bill authorizes the FDA to recall the products.⁶⁷ It also allows the FDA to impose civil penalties

53. See S. 5243, 118th Cong. §§ 1104(a)(1)(A), (b)(1)(C), (b)(1)(E) (2024).

54. See *id.* §§ 1104(a)(1)(A), (b)(1)(C), (b)(1)(E).

55. *Id.* § 1105(a)(1).

56. See *id.* § 1105(c).

57. See *id.* § 1105(e).

58. See *id.* § 1105(d).

59. See S. 5243, 118th Cong. § 1103(2)(B) (2024).

60. See *id.* § 1106(b)(1).

61. See *id.* §§ 1103(2)(E)–(J).

62. MINN. STAT. § 342.63 (2023).

63. *Id.* ch. 342, § 63.

64. S. 5243 §§ 1105(f)–(g).

65. *Id.* § 1105(g)(1).

66. *Good Manufacturing Practices*, WHO, <https://www.who.int/teams/health-product-policy-and-standards/standards-and-specifications/norms-and-standards/gmp> [https://perma.cc/SS6R-4HBZ] (last visited Feb.25, 2025).

67. S. 5243 § 1107.

between \$15,000 and \$250,000 per violation.⁶⁸ In addition, the FDA may inspect, recall, and fine businesses that sell prohibited cannabinoids, such as synthetic cannabinoids.⁶⁹ The Bill also directs other agencies, such as the Department of Transportation, to research and analyze data on cannabis-impaired driving to enable the development of standards for driving under the influence of cannabis.⁷⁰

In sum, the introduction of the Bill represents a significant advancement in the federal oversight of hemp-derived cannabinoid products in the United States. If enacted, the Bill would empower the FDA to regulate products that contain cannabinoids like THC and CBD, and would open the door for the establishment of safety standards that ensure consumer protection and business certainty.⁷¹ Overall, this legislation could mark a transformative shift toward consistency in how cannabinoid products are perceived and regulated at the federal level.

C. CONCLUSION

The Amendment and the proposed Bill mark key shifts in the U.S. hemp market. The Amendment could threaten the current hemp market, potentially driving the industry under.⁷² In contrast, the Bill offers a much-needed federal framework for regulating hemp-derived cannabinoids, ensuring uniform product safety and quality. As the industry grows, it is vital that lawmakers balance consumer protection with supporting innovation and business development.

II. Latest Cannabis Developments in Uruguay

Authors: Viviana Cervieri, Jesus Urbina, and Danilo Grigoli

This section highlights developments in the medicinal use of cannabis, including regulation of magistral formulas. A magistral formula refers to the preparation of a personalized medical indication for a patient to prevent or provide a solution to a medical condition. The article also covers developments in the legal recreational use of cannabis, including new varieties for sale in pharmacies and new user registration by pharmacies.

A. MEDICINAL USE OF CANNABIS REGULATIONS OF MAGISTRAL FORMULAS (DECREE NO. 56/023)

In 2013, Uruguay enacted legislation covering the use of magistral formulas.⁷³ Although Law 19.172 on Regulation and Control of Cannabis included content

68. See *id.* §§ 102(c)(3)(10)(A)–(B).

69. See *id.* § 1102(7).

70. See *id.* §§ 302(a)–(b).

71. See *id.*

72. Burns, *supra* note 19.

73. Decreto No. 56/023 [Decree No. 56/023], Ley 19.847 [Law 19.847], 16 Feb. 2023, art. 7 (Uru.), <https://ircca.gub.uy/se-publico-decreto-n56-023-reglamentario-de-la-ley-19-847/> [<https://perma.cc/UX49-3T3U>] [hereinafter Decree No. 56/023].

on magistral formulas for use in Uruguay,⁷⁴ Decree 56/023 (the Decree), enacted on February 16, 2023, further regulates access to medicinal cannabis treatments through magistral formulations. Under the 2023 Decree, these formulations must be prepared with a medical prescription⁷⁵ and can only be issued by authorized pharmacies that obtain extracts from suppliers authorized by the Ministry of Public Health (MSP).

The purpose of the Decree is to ensure quality and safe access for users who are medically treated and prescribed cannabis or cannabinoid-based products.⁷⁶ Likewise, it regulates the terms and conditions for accessing magistral formulas based on cannabis extracts or cannabinoids, as well as the conditions to obtain licenses.⁷⁷ Finally, it regulates the operation of the National Program for Access to Medicinal and Therapeutic Cannabis of the MSP.⁷⁸

Authorization for preparing magistral formulas is only permitted for community and hospital pharmacies that hold a license from the Institute of Regulation and Control of Cannabis (IRCCA) and the MSP.⁷⁹ According to Article 4 of the Decree, the dispensing of magistral products is only permitted in authorized pharmacies.⁸⁰ These pharmacies will review the prescribed formulation and carry out the pharmaceutical process, which may include “dilution, concentration, fractioning, mixing and packaging.”⁸¹ Preparations cannot be made without a specific medical prescription for a specific patient.⁸²

Only pharmacies authorized to prepare magistral formulas with cannabis extracts can purchase these products, and they may only purchase from suppliers authorized by the MSP.⁸³ According to Article 7 of the Decree, to initiate the transaction, pharmacies must present a Narcotics Acquisition Voucher and record the entry in a control book.⁸⁴ The supplier must return the voucher with confirmation of the sale and a batch analysis certificate.⁸⁵ Additionally, pharmacies must record all movements of raw materials and cannabis preparations, regardless of their THC content.⁸⁶ They must also archive the documentation for at least two years so that it is available to the health authority.⁸⁷

74. Ley 19.172 [Law 19.172], 1 Jul. 2014, Regulación y Control del Cannabis [Regulation and Control of Cannabis], art. 4 (Uru.), <https://www.impo.com.uy/bases/leyes/191722013#:~:text=Proh%C3%ADbese%20toda%20forma%20de%20publicidad,y%C3%ADa%20p%C3%ABlica%2C%20folletos%2C%20estandartes%2C> [https://perma.cc/ZA3J-YN3G].

75. See Decree No. 56/023, *supra* note 73, at art. 6.

76. See *id.*

77. See *id.* art. 11.

78. See *id.* arts. 14–15.

79. See *id.*

80. *Id.* art. 4.

81. See Decree No. 56/023, *supra* note 73, at art. 4.

82. *Id.*

83. *Id.* art. 7.

84. *Id.*

85. *Id.*

86. *Id.*

87. See Decree No. 56/023, *supra* note 73, at art. 7.

B. RECREATIONAL USE OF CANNABIS

1. New Variety for Sale in Pharmacies

As of October 15, 2024, a new cannabis variety called “Epsilon” became available in Uruguayan pharmacies.⁸⁸ This hybrid variety, predominantly a sativa blend, has a THC content of up to twenty percent and a cannabidiol (CBD) content of up to one percent.⁸⁹ It is the variety with the highest percentage of the primary psychoactive component of marijuana: THC.⁹⁰ It is sold in five-gram packages for approximately USD 14.⁹¹

The IRCCA further announced that this variety will be sold in pharmacies in the form of dried flowers in five-gram packages with zipper closures.⁹² The aim is to prevent users from resorting to the uncontrolled illegal market.⁹³ The products are registered with the MSP and are produced by authorized companies under strict IRCCA quality and traceability regulations.⁹⁴ Each batch undergoes rigorous laboratory analysis to ensure safety, verifying microbiological and physicochemical parameters.⁹⁵

2. New Registration Rules for Purchasing Cannabis in Pharmacies

The Uruguayan postal system, through an agreement with the IRCCA, offers a registration service for individuals to purchase cannabis in pharmacies.⁹⁶ To register, an individual may not be registered as a cannabis home-grower or cannabis club member, must be over eighteen years old, and must be a Uruguayan citizen or permanent resident.⁹⁷ Also, individuals must visit a Uruguayan post office with a valid identity card and proof of residence.⁹⁸ Additionally, it is mandatory to answer sociodemographic questions for statistical purposes.⁹⁹

The preparation and dispensing of cannabis-based extracts can only be conducted by entities in one of two categories: the first category refers to community pharmacies, while the second refers to hospital pharmacies that have a

88. *Épsilon Disponible en Farmacias a Partir del 15/10* [Epsilon Available in Pharmacies from 10/15], EL INSTITUTO DE REGULACIÓN Y CONTROL DEL CANNABIS [IRCCA], <https://ircca.gub.uy/epsilon-disponible-en-farmacias-a-partir-del-15-10/> [https://perma.cc/2235-J32U] (last visited Feb. 26, 2025).

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Epsilon Available in Pharmacies from 10/15*, IRCCA, *supra* note 88.

95. *Id.*

96. *¿Dónde y Cómo Registrarse?* [Where and How to Register?], EL INSTITUTO DE REGULACIÓN Y CONTROL DEL CANNABIS [IRCCA], <https://ircca.gub.uy/vias-de-acceso/donde-y-como-registrarse/> [https://perma.cc/YME3-RTUW] (last visited Feb. 26, 2025).

97. *Id.*

98. *Id.*

99. *Id.*

license from the IRCCA.¹⁰⁰ These pharmacies must register with the Cannabis Registry and obtain authorization from the MSP.¹⁰¹

Since June of 2024, this registration process offered by the postal system has been expanded to allow pharmacies participating in the cannabis dispensing system to handle the registration of purchasers.¹⁰² This is a significant advancement because it provides a new option in the Uruguayan cannabis market.¹⁰³

3. Conclusion

The regulation of medicinal cannabis in Uruguay through Decree No. 56/023 ensures safe access for patients and supports international export opportunities.¹⁰⁴ Recreational use is expanding, and a new user registration system is aimed at reducing the illegal market and promoting safety.¹⁰⁵ Uruguay's balanced approach to cannabis regulation is a model for other countries, with ongoing monitoring of its social, economic, and public health impacts.¹⁰⁶

III. Costa Rican Medicinal Cannabis: Current Status and Future Prospects

Author: Natuska Traña

In 2022, Costa Rica took a significant regulatory step by enacting Law on Medicinal and Therapeutic Cannabis and Hemp for Food and Industrial Use, No. 10113.¹⁰⁷ The country joined fifty-six other countries and territories that have legalized medical cannabis.¹⁰⁸ This legislation formally acknowledges the psychoactive and medicinal properties of cannabis and positions Costa Rica in the burgeoning medicinal cannabis market.¹⁰⁹

100. See Decree No. 56/023, *supra* note 73, at art. 11.

101. *Id.*

102. *A Partir del Mes de Junio las Farmacias del Sistema Pueden Realizar Registro de Usuarios* [From June, the System's Pharmacies Can Register Users], EL INSTITUTO DE REGULACIÓN Y CONTROL DEL CANNABIS [IRCCA], <https://ircca.gub.uy/a-partir-del-mes-de-junio-las-farmacias-del-sistema-pueden-realizar-registro-de-usuarios/> [https://perma.cc/4MDB-MFBK] (last visited Feb. 28, 2025).

103. See *id.*

104. See Decree No. 56/023, *supra* note 73, at art. 11.

105. See *Where and How to Register?*, IRCCA, *supra* note 96.

106. See *id.*

107. Ley No. 10113 [Law No. 10113], 2 Mar. 1996, Ley del Cannabis para Uso Medicinal y Terapéutico y del Cáñamo para Uso Alimentario e Industrial [Law on Cannabis for Medical and Therapeutic Use and Hemp for Food and Industrial Use] ch. II, sec. I, art. 5 (Costa Rica), http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NR TC&nValor1=1&nValor2=96518&nValor3=130412&strTipM=TC [https://perma.cc/SZG4-M3PU] [hereinafter Law No. 10113].

108. See Anthony Martinelli, *57 Countries Have Legalized Medical Marijuana*, MARIJUANA HERALD (June 13, 2024), <https://themarijuanaherald.com/2024/06/57-countries-have-legalized-medical-marijuana/> [perma.cc/4LP5-DU35].

109. See Law No. 10113, *supra* note 107.

The law introduces three distinct licenses specific to medicinal and therapeutic cannabis: one each for cultivation, processing, and the import and export of final products.¹¹⁰ It outlines three permits for hemp cultivation, processing, and importation, and it focuses on medicinal, food, and industrial applications.¹¹¹ Hemp products, characterized by a THC content of one percent or less,¹¹² are further streamlined and exempt from additional authorization requirements for import or export if they adhere to applicable health and sanitary standards for food, textiles, or supplements. To date, twelve licenses for cultivating psychoactive cannabis and forty-four authorizations for hemp cultivation have been granted,¹¹³ reflecting the sector's growth in Costa Rica.

A. REGULATORY CHALLENGES AND DELAYS

The initial classification of cannabis-based products for medicinal and therapeutic use as pharmaceuticals introduced regulatory hurdles, created uncertainty, and stalled market expansion.¹¹⁴ The industry faced further obstacles due to delays in regulatory implementation.¹¹⁵ Costa Rica's Constitutional Court issued a ruling in response to a petition filed against the Ministries of Health and Agriculture.¹¹⁶ In its ruling, the Court underscored the Ministries' failure to meet the statutory requirement to enact regulations within six months of the law's passage.¹¹⁷ Consequently, the Ministries had a two-month deadline to address these delays, creating a path forward for the industry's regulatory framework.¹¹⁸ Effective October 18, 2024, new regulations were introduced to reclassify cannabis-based products for medicinal and therapeutic use as alternative treatments for chronic conditions and distinguish them from traditional pharmaceutical drugs.¹¹⁹

110. *Id.* ch. II, sec. II, arts. 8–9.

111. *Id.*

112. *Id.* ch. II, § I, art. 5.

113. See *Titulos Habilitantes* [Qualifying Titles], MINISTERIO DE AGRICULTURA Y GANADERÍA [MINISTRY OF AGRICULTURE & LIVESTOCK], <https://www.mag.go.cr/Canamo/Canamo.html> [https://perma.cc/GN7N-NBLZ].

114. See *id.*

115. See Sala Constitucional, Resolución No. 27377, Sept. 20, 2024 (Costa Rica), <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-1250457> [https://perma.cc/W7S2-NJX2].

116. *Id.* § 1.

117. Andrei Siles, *Gobierno Tiene Dos Meses para Reglamentar Ley para Uso de Cannabis Medicinal, Ordena Sala IV* [Government Has Two Months to Regulate Law for the Use of Medicinal Cannabis, Room IV Orders], AMELIA RUEDA (AR) (Sept. 29, 2024), <https://ameliarueda.com/noticia/sala-iv-ordena-implementar-reglamentacion-uso-medicinal-terapeutico-cannabis-noticias-costa-rica> [https://perma.cc/X2ZW-TPKP].

118. See *id.*

119. See Law No. 10113, *supra* note 107.

B. A SHIFT IN PRODUCT CLASSIFICATION

The updated regulations¹²⁰ now categorize medicinal cannabis products into two main types: dry product (such as flowers and inflorescences) and “dosage form,” which encompasses processed and packaged products with defined concentrations of CBD or THC.¹²¹ This classification broadens the scope for these products and allows them to be sold as therapeutic and medicinal treatments rather than strictly regulated pharmaceuticals.¹²²

C. NEW REGULATIONS ON LOCAL SALES AND CANNABIS PRESCRIPTIONS

The revised framework mandates that licensed pharmacies produce individual preparations of cannabis-based treatments in non-sterile pharmaceutical forms that must be prescribed by a physician specifying THC concentrations.¹²³ Additionally, these licensed pharmacies are the authorized points of sale for cannabis-based products for medicinal and therapeutic use.¹²⁴ This change aims to balance regulatory oversight with accessibility for patients seeking cannabis-based treatments.¹²⁵

Despite these regulatory advancements, implementation of a robust traceability system remains a critical need. The planned system is intended to monitor the lifecycle of cannabis products—from seed acquisition by producers through to final commercialization and export, with specific protocols for waste management.¹²⁶ The government has set a twenty-four-month timeline to develop and implement this traceability mechanism.¹²⁷

Additional technical regulations are anticipated, addressing administrative procedures, health registration, and oversight of cannabis-based products.¹²⁸ These regulations are expected within ten months of the effective date of the current regulatory framework.¹²⁹

D. OUTLOOK

As Costa Rica continues to refine its regulatory approach, the industry’s potential hinges on establishing a clear, consistent framework aligned with international standards.¹³⁰ Such a framework will support growth in a sector anticipated to attract substantial investment and operational interest from domestic and international

120. See *id.*

121. See Law No. 10113, *supra* note 107, at art. 3, § 29.

122. *Id.*

123. *Id.* art. 3, § 27; *id.* art. 7(a); *id.* arts. 11, 14, 16, 21, 22, 29.

124. *Id.* art. 7.

125. See Law No. 10113, *supra* note 107.

126. *Id.* Transitorio I.

127. *Id.*

128. *Id.* Transitorio II.

129. *Id.*

130. See *id.*

stakeholders.¹³¹ These milestones will be instrumental in shaping Costa Rica's position within the global medicinal-cannabis industry.¹³²

IV. Revision of Medical Cannabis Regulatory Law in Poland—Greater Supervision over E-Prescriptions and Online Medical Consultations

Authors: Jakub Gladkowski and Lukasz Chwalkowski

Medicinal use of cannabis became possible in Poland in 2017 with the passage of the “Act amending the Act on Counteracting Drug Addiction.”¹³³ One of the significant modifications made by the Act was the introduction of Article 33a (Section 1 of the Act of 29 July 2005).¹³⁴ According to that provision:

Herb of hemp other than fibrous and extracts, pharmaceutical tinctures, as well as all other extracts from hemp other than fibrous and resin of hemp other than fibrous . . . may constitute a pharmaceutical raw material . . . intended for the preparation of prescription drugs . . . after obtaining a marketing authorization issued by the Polish President of the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products.¹³⁵

These changes have had a significant impact on the Polish pharmaceutical market: they have enabled the use of dried hemp as a pharmaceutical raw material, i.e., a substance or mixture of substances used to prepare or manufacture medicinal products.¹³⁶ But this may only be done only after obtaining a permit, which is issued in the form of an administrative decision by the President of the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products.¹³⁷ The permit is valid for a period of five years.¹³⁸ An application for such a permit may be submitted by the “responsible entity,” which is an entrepreneur defined in the Act of March 6, 2018—Entrepreneurs’ Law, or an entity conducting business in a Member State of the European Union or the European Free Trade Association

131. See Law No. 10113, *supra* note 107.

132. See *id.*

133. USTAWA, z dnia 7 lipca 2017 r. o zmianie ustawy o przeciwdziałaniu narkomanii oraz ustawy o refundacji leków, środków spożywczych specjalnego przeznaczenia żywieniowego oraz wyrobów medycznych [Act of 7 July 2017 Amending the Act on Counteracting Drug Addiction and the Act on the Reimbursement of Medicines, Foodstuffs for Particular Nutritional Uses and Medical Devices], JOURNAL OF LAWS, item 1458 (Jul. 7, 2017) (Pol.), <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20170001458/O/D20171458.pdf> [<https://perma.cc/HC3W-645E>] [hereinafter Counteracting Drug Addiction Act].

134. *Id.* item 1939.

135. *Id.*

136. USTAWA, z dnia 6 września 2001 r. Prawo farmaceutyczne [Act of 6 September 2001 – Pharmaceutical Law], art. 2, JOURNAL OF LAWS, item 1381 (Sept. 6, 2001) (Pol.), <https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/prawo-farmaceutyczne-16915922> [<https://perma.cc/TX6Y-FT83>] [hereinafter Pharmaceutical Law].

137. Countering Drug Addiction Act, *supra* note 133, at art. 33a.

138. *Id.* §§ 1, 3.

having authorization to market a medicinal product.¹³⁹ The application must provide a description of the pharmaceutical form of the product and an audit confirming that the manufacturer of the active substance complied with the requirements of Good Practice.¹⁴⁰ It must also present in detail the production and controls of a given product.¹⁴¹

The application should also include documentation regarding leaflets and other marketing materials confirming the proper presentation of the product in its future marketing to the public.¹⁴² Under the Act, the entire permit issuing procedure should be completed within 210 days of submitting a complete application.¹⁴³ This is important to know for investors entering the market.

It is also important that, in Poland, so-called “medical cannabis” can only be purchased in a pharmacy that has authorization under the latest regulations.¹⁴⁴ A prescription drug with the appropriate concentration of THC is only available in pharmacies selling narcotic drugs, which Polish law classifies in groups I-N.¹⁴⁵ Such a pharmacy status guarantees compliance with strict organizational regulations of pharmaceutical law regarding the storage and distribution of medical cannabis products.¹⁴⁶

Additionally, a patient collecting the product in person must have a special prescription.¹⁴⁷ Medicinal cannabis in Poland is sold only with a prescription that follows the national procedure (special “RPW” annotation), i.e., “having the status of a document for the product containing narcotic drugs or psychotropic substances.”¹⁴⁸ Such a medicinal product is not available under the European Union’s procedure for the free movement of cross-border medical services.¹⁴⁹

A. OBTAINING MEDICAL CANNABIS PRESCRIPTION AS A PATIENT – LOCATING THE LATEST REGULATORY CHANGES

In Poland, prescription drugs containing hemp herb other than fibrous hemp with the allowed THC concentration can only be issued with the prescription of a Polish doctor (excluding veterinarians) to be filled in a Polish pharmacy.¹⁵⁰ This means prescriptions can be issued by almost any doctor who has the right to issue RPW prescriptions (covering narcotics).¹⁵¹

139. Pharmaceutical Law, *supra* note 136, at art. 2.

140. *Id.*

141. Dorota Frańczak & Ewelina Lech, *Juridical and Social Aspects of The Legalization of Cannabis for Medical Use*, 140 SCI PAPERS SILESIAN U. TECH: ORG. & MGMT. 73, 79 (2019).

142. Counteracting Drug Addiction Act, *supra* note 133, at art. 10.

143. Frańczak & Lech, *supra* note 141, at 79.

144. *Id.* at 78.

145. *Id.* at 75.

146. *Id.* at 81.

147. See generally Counteracting Drug Addiction Act, *supra* note 133.

148. See Pharmaceutical Law, *supra* note 136, at art. 23a.

149. Frańczak & Lech, *supra* note 141, at 81.

150. See Counteracting Drug Addiction Act, *supra* note 133, at art. 33b(4).

151. See generally Frańczak & Lech, *supra* note 141.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

36 THE YEAR IN REVIEW

[VOL. 59]

It is important to note that, in Poland, prescriptions are issued both in the traditional way and via online platforms or during teleconsultations.¹⁵² In recent years, online consultations have become increasingly popular, facilitating greater access to medical care.¹⁵³ An online prescription, like the one issued in a physical location, is legal and based on the medical qualifications of the provider and a detailed interview with the patient.¹⁵⁴ When a doctor issues an e-prescription linked to the patient's Personal Identification Number (PIN), it is recorded in the treatment history in the Online Patient Account.¹⁵⁵ Accordingly, the patient has easy access to all prescribed medications and information on dosage, increasing the safety and effectiveness of therapy.¹⁵⁶

Additionally, the e-prescription is also emailed to the patient as a PDF attachment, which allows for easy storage and sharing with a pharmacist.¹⁵⁷ The patient also receives a text with a four-digit code, providing additional security.¹⁵⁸ The e-prescription is fulfilled in a standard manner; the pharmacist can scan the barcode from a printout, or the patient can provide a code.¹⁵⁹ If the patient provides a code, additional verification is required via the patient's PIN, protecting against possible abuse.¹⁶⁰

Telemedicine, as well as the wide range of doctors authorized to prescribe medical cannabis, has made legal acquisition in Poland much easier.¹⁶¹ Thanks to the development of technology and the growing popularity of e-consultations, patients can obtain the medicines they need more quickly.¹⁶² This has contributed to the growing interest in medicinal substances of hemp origin.¹⁶³ But the data collected raised concerns about the reliability of teleconsultations and accurate patient diagnoses as well as concerns about those attempting to circumvent the law.¹⁶⁴

152. *Telemedicine in Poland: Utilization, Regulation and Challenges*, PETLIC, <https://www.petlic.co/post/telemedicine-in-poland-utilization-regulation-and-challenges> [https://perma.cc/G5WX-6CZ7] (last visited Feb. 21, 2025).

153. See generally *id.*

154. *E-prescription*, CENTRUM MEDYCZNE DAMIANA (July 7, 2021), <https://www.damian.pl/en/e-prescription/> [https://perma.cc/HE9U-55QW].

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *E-prescription*, *supra* note 154.

161. See generally *id.*

162. See generally *id.*

163. Patricio Liddle, *Poland Tightens Medical Cannabis Rules, Bans Telehealth Prescriptions*, BENZINGA (Sept. 16, 2024), <https://www.benzinga.com/markets/cannabis/24/09/40877465/poland-tightens-medical-cannabis-rules-bans-telehealth-prescriptions> [https://perma.cc/6645-6KYA].

164. *Id.*

What the data demonstrated was that, in recent years, there has been a significant increase in the quantity of medical cannabis prescribed in Poland.¹⁶⁵ For example, as reported by the e-Health Center, in 2023, pharmacies sold as much as four and a half tons of the raw material compared to three tons the previous year.¹⁶⁶ As a result, and in order to prevent abuse in prescribing opioids, in October 2024, the Polish Minister of Health issued a regulation “introducing enhanced supervision over the prescription of controlled substances, i.e., fentanyl, morphine, oxycodone and non-fibrous hemp herb and extracts, pharmaceutical tinctures, as well as all other extracts from non-fibrous hemp and cannabis resin.”¹⁶⁷ These regulations tighten access to medical cannabis in Poland and may affect how patients use medical cannabis.¹⁶⁸ The regulations also place restrictions on how the medication may be prescribed in telehealth appointments.¹⁶⁹

B. NO POSSIBILITY TO OBTAIN AN ONLINE PRESCRIPTION FOR MEDICAL CANNABIS AFTER 2024

The above-mentioned regulation of the Polish Ministry of Health introduced key changes to Polish regulations on issuing prescriptions for medical cannabis and other controlled substances, especially as it related to telehealth prescriptions including the need for mandatory physical examinations of patients by doctors before issuing cannabis therapy items.¹⁷⁰ The only exception is the continuation of a previous treatment directed by a primary health care provider.¹⁷¹ This means that patients who are not undergoing treatment will have to personally appear for a visit to the doctor for a conventional examination.¹⁷² Additionally, doctors will verify previous medicines in the health care information system to confirm that previous therapies were insufficient, which may affect the time needed to issue a prescription.¹⁷³

A new annex has also been introduced, which specifies in detail the controlled substances that require personal examination of the patient before issuing a prescription, namely, “fentanyl, morphine, oxycodone, non-fibrous hemp and extracts, pharmaceutical tinctures, as well as all other extracts from non-fibrous

165. *E-Health Center: 4.6 Tons of Medical Marijuana Sold in Pharmacies in 2023*, PULS MEDYCYN (Feb. 4, 2024), <https://pulsmedycyny.pl/medycyna/farmakologia/centrum-e-zdrowia-46-tony-medycznej-marihuany-sprzedanych-w-aptekach-w-2023/> [<https://perma.cc/4MKQ-KGT8>].

166. *Id.*

167. *Health Minister Introduces Greater Control Over Opioids*, GOV.PL (Oct. 31, 2024), <https://www.gov.pl/web/zdrowie/minister-zdrowia-wprowadza-wieksza-kontrolę-nad-opioidami> [<https://perma.cc/U667-HEDL>].

168. *See generally id.*

169. *See generally id.*

170. HCN News Team, *Poland’s Medical Cannabis Prescriptions Decline Amid Regulatory Changes*, HC NETWORK (Jan. 24, 2025), <https://highlycapitalized.com/polands-medical-cannabis-prescriptions-decline-amid-regulatory-changes/> [<https://perma.cc/UYQ7-5X2X>].

171. *Id.*

172. *Id.*

173. *Id.*

hemp and cannabis resin” (“medical cannabis”).¹⁷⁴ Limiting access to teleconsultations for the purpose of obtaining medical cannabis has eliminated the possibility of using e-visits to obtain a prescription for the medication.¹⁷⁵

As can be seen, the Polish Ministry of Health sees the main regulatory problem not so much in the legalization of medical cannabis for medical purposes but rather in the lack of adequate controls designed to prevent abuse.¹⁷⁶ Restricting access to teleconsultations and requiring a physical examination is intended to reduce abuse.¹⁷⁷ Although the aim of the new regulations is to increase safety and control over the use of controlled substances, in practice, these changes are important primarily for drug suppliers operating on teleconsultation platforms.¹⁷⁸ The future of the cannabis market in Poland will largely depend on the further development of regulations around issuing prescriptions and not permits for entities responsible for introducing them to the market.¹⁷⁹

V. Chile: Developments in Chilean Front of Panel Labeling: Too Much Information?

Authors: Ignacio Gillmore and Cristina Busquets

In light of recent initiatives and proposals from the FDA and the World Health Organization (WHO) concerning Front of Panel Nutritional Labelling (FPNL), recent developments in Chile—a pioneer in FPNL regulations—are particularly interesting. This analysis explores updates to Chile’s rules, challenges for the foodstuff industry, and lessons for implementing FPNL in other jurisdictions.

Since 2012, with the enactment of Law No. 20,606 on the Nutritional Composition of Foods and their Advertisement (Law 20,606),¹⁸⁰ the regulatory landscape of labelling and advertising of foodstuff products in Chile has had a dramatic and rapid change.¹⁸¹ Law 20,606 represented an important challenge not only for manufacturers and importers of foodstuff products who had to make several adjustments in the presentation and advertisement of their products but also for consumers who had to quickly learn to navigate the new information.¹⁸² In

174. See generally GOV.PL, *supra* note 167.

175. See generally *id.*

176. See generally *id.*

177. See generally *id.*

178. See generally *id.*

179. See generally *id.*

180. See generally Law No. 20606, Sobre Composición Nutricional De Los Alimentos Y Su Publicidad [On Nutritional Composition of Food and Its Advertising], Junio 6, 2012 (Chile), <https://bcn.cl/2eu90> [<https://perma.cc/S572-6BUN>].

181. *Id.* art. 1.

182. *Nutritional Composition: They Propose Requiring Labeling of Ultra-Processed Foods and Restricting Their Advertising*, SENADO DE LA REPUB. DE CHILE (Oct. 24, 2024), <https://www.senado.cl/comunicaciones/noticias/composicion-nutricional-proponen-exigir-la-rotulacion-de-alimentos> [<https://perma.cc/NW2R-8NNA>].

2024, various initiatives were proposed that would, again, impact the manner in which foodstuff products are offered in Chile and affect FPNL.¹⁸³ Two of the initiatives could drastically alter the look and composition of the FPNLs of foodstuff products, bringing a new concern for food manufacturers and importers of foodstuff in Chile, and a change in what consumers see on shelves.¹⁸⁴

A. NEW WARNINGS FOR FOODS CONTAINING NON-NUTRITIVE SWEETENERS

The first initiative is a regulatory proposal made by the Chilean Ministry of Health (MINSAL) in April 2024: “The Ministry of Health has proposed a modification to the Food Sanitary Regulations, Supreme Decree No. 977/96, introducing a new Article 120 Ter.”¹⁸⁵ This initiative followed the WHO’s 2023 publication of guidelines regarding consumption of sugarless sweeteners.¹⁸⁶ In these guidelines, the WHO recommends not to use sugarless sweeteners as a means to control weight or to reduce the risk of non-transmissible diseases.¹⁸⁷

According to the proposal, this new regulation is based on the recent evidence presented by the WHO on the negative effects of the consumption of sweeteners, as well as national data showing high consumption by children.¹⁸⁸ Therefore, MINSAL considers it imperative to implement a national regulation so parents and childcare providers have the information needed to make decisions about the consumption of these products.¹⁸⁹

The regulation includes a new “warning sign” for the FPNL of foodstuff products containing any non-nutritive sweeteners.¹⁹⁰ The proposed warning sign consists of a black rectangle with white letters and the message “CONTAINS SWEETENERS. AVOID CONSUMPTION IN CHILDREN.”¹⁹¹ This warning must be placed on

183. *Id.*

184. *See id.*

185. *Chile Proposes New Labelling on Sweeteners*, FOOD COMPLIANCE (June 24, 2024), <https://foodcomplianceinternational.com/industry-insight/news/4475-chile-proposes-new-labelling-on-sweeteners> [https://perma.cc/5PYJ-MD7R].

186. *Use of Non-Sugar Sweeteners*, WHO (May 15, 2023), <https://www.who.int/publications/i/item/9789240073616> [https://perma.cc/GJS4-8FN3].

187. *New WHO Guideline Advises Not to Use Non-Sugar Sweeteners for Weight Control in Newly Released Guideline*, WHO (May 15, 2023), <https://www.who.int/news/item/15-05-2023-who-advises-not-to-use-non-sugar-sweeteners-for-weight-control-in-newly-released-guideline> [https://perma.cc/2BUD-6WJK].

188. *Id.*

189. FOOD COMPLIANCE, *supra* note 185.

190. Decree No. 977/96, art. 120, May 13, 1997 (Chile), <https://www.wipo.int/wipolex/en/legislation/details/16357> [https://perma.cc/ZC9W-SFHB].

191. *Chile – Proposed Amendment to the Food Sanitary Regulations on the provision of the symbols “HIGH IN” on the Label*, INFOALIMENTARIO (Jan. 27, 2023), <https://infoalimentario.com/2023/01/27/chile-proposed-amendment-to-the-food-sanitary-regulations-on-the-provision-of-the-symbols-high-in-on-the-label/> [https://perma.cc/7Q6U-PLUZ].

the front face of the label, and if the product contains any “High in” warning signs, then it must be placed next to or very near said warnings.¹⁹²

This proposal is currently in the public consultation stage.¹⁹³ Nevertheless, if enacted, the local food industry will again have to adapt their labels.¹⁹⁴ The proposal has been heavily criticized by the food industry, which argues that it seems to contradict the public policy behind Law 20,606 and the “High in” warnings.¹⁹⁵

Law 20,606 aimed to incentivize foodstuff manufacturers to reformulate their products to avoid the obligation of incorporating “High in” signs and further advertisement restrictions.¹⁹⁶ Consequently, many companies decided to replace, either partially or completely, the sugar in their products with non-nutritional sweeteners.¹⁹⁷ The 2024 proposal impacts manufacturers that heavily invested to meet the “High in” policy and affects the public by introducing another element on labels that consumers will have to interpret.¹⁹⁸

Furthermore, because the proposed regulation does not establish a minimum amount or concentration of sweeteners in order to trigger the obligation to include a warning, it is possible that the same product would have to carry both the “High in” sugars warning and the warning related to the use of sweeteners.¹⁹⁹ That could be overwhelming and confusing for consumers, particularly concerning products that were not able to replace their sugar content completely or that are still in the process of reformulation.

B. NEW WARNINGS FOR ULTRA-PROCESSED FOODS

The second initiative is a Bill of Law presented by two Senators in October 2024 that aims to modify Law 20,606 by incorporating additional obligations and restrictions in the labeling and advertisement of “ultra-processed” foodstuff

192. This warning sign consists of black octagons with white letters that must be included on the front panel of the label of foodstuff products with added sodium, sugars, or saturated fats when their nutrient content exceeds the values established in Table Number 1 of the Article. The warning sign must state “High in” along with the respective nutrient in which the product exceeds the established limits. See Decree No. 977/96, *supra* note 190, at art. 120.

193. INFOALIMENTARIO, *supra* note 191.

194. *Id.*

195. Teresa Correa et al., *Responses to the Chilean Law of Food Labeling and Advertising: Exploring Knowledge, Perceptions and Behaviors of Mothers of Young Children*, 16 INT’L J. BEHAV. NUTRITION & PHYSICAL ACTIVITY, no. 21, 2019, at 1.

196. Nano Baahona, Cristóbal Otero & Sebastián Otero, *Equilibrium Effects of Food Labeling Policies*, 91 ECONOMETRICA 839, 843 (2023).

197. Natalia Rebolledo, *After Chile’s Labeling and Marketing Law, Drink Purchases Contained Less Sugar and More Non-nutritive Sweeteners, but Overall Sweetness Stayed the Same*, GLOB. FOOD RSCH. PROGRAM (Mar. 10, 2023), <https://www.globalfoodresearchprogram.org/after-chiles-labeling-and-marketing-law-drinks-contained-less-sugar-and-more-non-nutritive-sweeteners-but-overall-sweetness-stayed-the-same/> [https://perma.cc/XP2Q-UH5P].

198. *Id.*

199. Decree No. 977/96, *supra* note 190, at art. 118.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

FOOD, AGRICULTURE & CANNABIS 41

products.²⁰⁰ In this Bill of Law, the Senators state that there is evidence that links the consumption of ultra-processed foods to several non-transmissible diseases like obesity, hypertension, and cerebrovascular and coronary heart disease, and that “it is not possible to easily identify these types of foods [in the market].”²⁰¹ Therefore, according to the authors of this Bill of Law, “labeling is required to guide the consumer at the time of purchase.”²⁰²

Furthermore, the authors of this Bill of Law assert it is “necessary not only to have a label to guide consumers in the purchase of food products, allowing [them] to clearly identify those that are ultra-processed, but also to restrict the advertising of these products in the mass media.”²⁰³ Hence, they propose that products that contain “more than five ingredients formed from chemical-industrial processes” must include a warning sign.²⁰⁴ They also extend the advertisement restrictions in Law 20,606 regarding “High in” products to include this new category of ultra-processed foods, and to expressly restrict digital advertisements and paid ads for ultra-processed foods on the internet.²⁰⁵ Consequently, enactment of this Bill of Law would mean products in Chile would have to display yet another warning sign and many will have to include a new ultra-processed food tag.²⁰⁶

C. CONCLUSION

Chilean initiatives impose further burdens on manufacturers and importers, and impact consumers’ shopping experience.²⁰⁷ If, as a result of the approval of the above-explained proposals, there are products that must contain several warnings on the front of their package, then it is unlikely that consumers will be able to adequately process and understand all of that information.²⁰⁸ The question then becomes, *when is it too much information?* Also, it is important not to forget that the information that all these new warning signs are intended to convey is already available in the information included on the FPNL of any foodstuff products sold in Chile.²⁰⁹ Therefore, it seems necessary to find a way to coordinate and harmonize these initiatives, and to provide the public with education on how to properly read and understand the label information while still accomplishing what the legislature intends.²¹⁰

200. Bill of Law Bulletin No. 17176-11, Oct. 11, 2024, Senate of Chile, https://tramitacion.senado.cl/appsenado/templates/tramitacion/index.php?boletin_ini=17176-11 [<https://perma.cc/4H4Z-FT24>].

201. *Id.* at 4.

202. *Id.* at 5.

203. *Id.* at 7.

204. *Id.* at 8.

205. *Id.* at 7.

206. Bill of Law Bulletin No. 17176-11, *supra* note 200, at 2.

207. *Id.* at 7.

208. *Id.*

209. *Id.*

210. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

42 THE YEAR IN REVIEW

[VOL. 59]

FINAL REMARKS

In 2024, significant developments have taken place across the hemp, cannabis, and food industries in the United States, Latin America, and Poland.²¹¹ As highlighted in the articles above, lawmakers, regulators, industry stakeholders, and consumers in these regions are actively engaging with a range of social, environmental, and public health challenges affecting various facets of these industries.²¹² The authors of this article argue that the ongoing changes are crucial for advancing and refining the laws and regulations in these countries.²¹³

211. See *supra* Parts I, II, III, IV, V.

212. See *supra* Parts I, II, III, IV, V.

213. See *supra* Parts I, II, III, IV, V.

Latin America and Caribbean

JOSÉ FRANCISCO MAFLA, FRANCISCO UGARTE LARRAÍN, AND FRANCISCA EYZAGUIRRE FONTAINE*

This article surveys significant legal developments in Latin America and the Caribbean in 2024, specifically in Colombia and Chile.

I. Colombia

A. REFORM OF JUDICIAL ADMINISTRATION

The Colombian Congress enacted Law 2430 on October 9, 2024, reforming the Statutory Law of Judicial Administration, which aims to enhance autonomy, transparency, and efficiency in the judicial branch.¹ Key updates include creating an interinstitutional technical committee to improve judicial data interoperability and instituting measures to expedite legal processes through case grouping.² The law also strengthens merit-based hiring, protects labor rights, and promotes access to justice, particularly for rural and vulnerable communities.³

Additionally, Law 2430 mandates integrating new technologies, such as digitizing judicial processes and enabling online case management.⁴ The Superior Council of the Judiciary will oversee a digital transformation plan every four years, ensuring data privacy and service efficiency through modern management models.⁵ The law took effect immediately upon its enactment.⁶

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1. L. 2430/24, Octubre 9, 2024, Diario Oficial [D.O.] (Colom.).

2. See Carolina Zapata, *Diez Cambios Incorporados Por La Reforma A La Ley 270 De 1996*, *Ámbito Jurídico* (Oct. 9, 2024), <https://www.ambitojuridico.com/noticias/analisis/administracion-publica/diez-cambios-incorporados-por-la-reforma-la-ley> [<https://perma.cc/5DDG-XA47>].

3. *Id.*

4. *Id.*

5. Gobierno Nacional Sancionó Ley De Administración De Justicia Para Modernizar El Sistema Judicial Colombiano, GOV.CO: MINISTERIO DE JUSTICIA (Oct. 9, 2024), <https://www.minjusticia.gov.co/Sala-de-prensa/Paginas/Gobierno-nacional-sanciono-Ley-de-Administracion-de-Justicia-para-modernizar-el-sistema-judicial-colombiano.aspx> [<https://perma.cc/8UXA-A6QY>].

6. *Id.*

B. REFORM OF THE PENSION SYSTEM

The Colombian Congress passed Pension Reform Law 2381 on July 16, 2024, effective July 1, 2025, to unify the public and private pension systems into a multi-pillar framework.⁷ Under the reform, contributions up to a threshold level go to the national pension fund (*Colpensiones*), while earnings beyond the threshold level may be invested in private funds.⁸ Initially set at four times the minimum wage, this threshold was reduced to 2.3 times the minimum wage to enhance pension sustainability, though some argue for further reduction to mitigate future state liabilities.⁹

Key features include central bank management of the contributory pillar's fund, aimed at ensuring long-term stability.¹⁰ A transition regime keeps individuals close to retirement under the existing system, while a subsidy system aims to raise coverage from twenty-four percent to fifty-three percent within a year.¹¹ The reform also works to close the gender gap by reducing women's required contributions over time and allowing a fifty-week deduction per child.¹² Additional pillars provide lifetime income for those with partial contributions, supporting those in need without full pension eligibility.¹³

C. CUSTOMS REGIME REFORM

On May 22, 2024, Colombia issued Decree 659,¹⁴ amending Decree 1165 of 2019, to modernize customs regulations and improve logistical efficiency per the National Logistics Policy.¹⁵ Key changes include a mandatory advanced declaration for importers, requiring submission forty-eight hours before goods arrive, with exceptions for certain goods and situations.¹⁶ Non-compliance results in fines and potential seizures, while partial compliance can reduce penalties.¹⁷

The reform also mandates advanced declarations for Free Trade Zones, with fines for non-compliance, and requires authorization for exports from Free Trade Zones

7. L. 2381, Julio 16, 2024, Diario Oficial [D.O.] (Colom.).

8. L. 2381, art. 3.3.

9. *Id.*

10. L. 2381, art. 5(9).

11. Santiago A. Barrantes, *Los Cinco Puntos Clave De La Reforma Pensional Que Aprobó El Senado*, LA SILLA VACÍA (Apr. 24, 2024), <https://www.lasillavacia.com/silla-nacional/los-cinco-puntos-clave-de-la-reforma-pensional-que-aprobo-el-senado/> [<https://perma.cc/ND9G-GK2Z>].

12. *Id.*

13. *Id.*

14. Decreto 659 de 2024, mayo 22, 2024, Diario Oficial [D.O.] (Colom.).

15. See *Decreto 659 de 2024: Modificaciones Al Régimen Aduanero*, BRIGARD URRUTIA (May 22, 2024), <https://www.bu.com.co/es/insights/noticias/decreto-659-de-2024-modificaciones-al-regimen-aduanero> [<https://perma.cc/6RXQ-LTG9>].

16. Claudia Garzón, *¿Cuáles Son Los Principales Cambios Al Régimen Aduanero?*, LEXIR (June 25, 2024), <https://lexir.co/2024/06/25/cuales-son-los-principales-cambios-al-regimen-aduanero> [<https://perma.cc/6XN5-GF97>].

17. *Id.*

to ensure adherence to internationalization commitments.¹⁸ Additional modifications include new definitions and adjustments to tax payment provisions for certain operators.¹⁹ Partial implementation began on June 6, 2024, with full execution pending updates to the National Directorate of Taxes and Customs (DIAN's) electronic system.²⁰

D. LABOR REFORM

On October 17, 2024, Colombia's Chamber of Representatives approved a labor reform bill with eighty-four articles, advancing it to the Senate for further debate.²¹ Expected to pass by mid-2025, this reform introduces significant changes to enhance job security, adapt labor rights for digital workers, and modernize employment frameworks.²²

Key provisions include automatic conversion of fixed-term contracts to indefinite-term after four years, social benefits for gig economy workers, and expanded teleworking rights that allow cross-border remote work.²³ The reform also extends paternity leave gradually to four weeks by 2026 and recognizes inmate labor as valid work experience to aid post-release reintegration.²⁴ Additionally, it mandates formal contracts for transport workers to improve job stability in that sector.²⁵

II. Chile

A. TAX COMPLIANCE ACT

Law No. 21,713 (the Act)²⁶ was enacted on October 24, 2024.²⁷ The Act seeks to ensure due compliance with a comprehensive set of tax regulations within its so-called Convention for Economic Growth, Social Progress and Fiscal Responsibility, an initiative that is part of Chile's efforts to promote sustainable economic

18. *Id.*

19. *El Nuevo Estatuto Aduanero Potenciará La Lucha Contra El Contrabando*, DIAN (June 25, 2024), <https://www.dian.gov.co/Prensa/Paginas/NG-ElNuevo-Estatuto-Aduanero-potenciara-la-lucha-contra-el-contrabando.aspx> [https://perma.cc/T4CN-7FFK].

20. *Id.*

21. *See Fue Aprobada La Reforma Laboral Con 81 Artículos, Continuará Su Trámite En El Senado*, GOV.CO: CÁMARA DE REPRESENTANTES (June 5, 2024), <https://www.camara.gov.co/fue-aprobada-la-reforma-laboral-con-81-articulos-continuara-su-tramite-en-el-senado> [https://perma.cc/VT3R-T5TG].

22. *Id.*

23. Texto definitivo del Proyecto de Ley No. 166 de 2023, CÁMARA DE REPRESENTANTES (Colom. 2024); Valentina Sanchez Forero, *ABC De Los Cambios Que Se Aprobaron En La Cámara En El Debate De Reforma Laboral*, LA REPÚBLICA (Oct. 31, 2024), <https://www.larepublica.co/especiales/lo-bueno-lo-malo-y-lo-feo-de-la-reforma-laboral/lo-aprobado-por-la-camara-de-la-nueva-reforma-laboral-3988410> [https://perma.cc/3NFM-6L5W].

24. Forero, *supra* note 23.

25. *Id.*

26. L. No. 21, 713, Octubre 24, 2024, DIARIO OFICIAL [D.O.] (Chile).

27. Garzón, *supra* note 16.

development, enhance social welfare, and ensure fiscal responsibility.²⁸ The various amendments introduced by the Act do not increase the tax burden on taxpayers, but instead provide some incentives and contemplate a wide range of rules aimed at strengthening the controls on the taxpayers and delivering the government agencies, especially the Financial Analysis Unit (UAF) and the Internal Revenue Service (SII), access to various reporting and transaction information.²⁹ This goal is to give the banks, financial entities, and other reporting entities the tools available to ensure that taxpayers pay the taxes they owe in accordance with tax regulations.³⁰

The Act focuses on the fight against informality, tax compliance, tax avoidance, and tax evasion, as well as the modernization of tax administration and the strengthening of the institutional framework, among other key rules and principles.³¹ Key issues covered by the Act include, among others, the following: (a) Simplification of procedure for lifting bank secrecy: An expeditious procedure (five days) is contemplated in the case of certain tax offenses, serious inconsistencies, or recidivism on law infringements, and new rules that look for the improvement of the effectiveness of tax audits.³² (b) Introduction of a reward system for anonymous whistleblowers and substantial collaborators: Reporting of this type of offense is encouraged with the anonymous whistleblower, allowing any citizen who reports a tax crime to receive a reward of ten percent of the fines applied, provided that certain requirements are met and subject, further, to certain exceptions.³³ Moreover, the Act allows taxpayers who actively collaborate with the investigation of tax offenses to avoid criminal prosecution, provided that the information they furnish or make available allows the detection of tax offenses.³⁴ (c) New tax offenses and harsher penalties: New criminal offenses are defined, and penalties associated with the most serious tax offenses are increased.³⁵

B. CRIMINAL LIABILITY OF LEGAL ENTITIES

On August 17, 2023, Chile enacted Law No. 21,595 on Economic Crimes (ECL).³⁶ The ECL aimed to consider and systematize a wide range of white-collar misconducts, offenses and lack of regulatory compliance on “economic crimes.”³⁷ The law established four major categories of crimes, new penalties and sanctions,

28. *Id.*

29. *Chile: Corporate – Significant Developments*, PWC: WORLDWIDE TAX SUMMARIES, <https://taxsummaries.pwc.com/chile/corporate/significant-developments> [https://perma.cc/7JQM-AATZ] (last updated Jan. 6, 2025).

30. *Id.*

31. *See Ley de Cumplimiento de Obligaciones Tributarias*, THOMSON REUTERS (Oct. 28, 2024), <https://www.laleyaldia.cl/?p=2670> [https://perma.cc/3U2A-EMHJ].

32. *See id.*

33. *Chilean Congress Approves Comprehensive Tax Compliance Bill*, EY (Oct. 14, 2024), <https://globaltaxnews.ey.com/news/2024-1889-chilean-congress-approves-comprehensive-tax-compliance-bill> [https://perma.cc/UNY6RQQC].

34. *See id.*

35. *See id.*

36. *See* L. No. 21595, Agosto 17, 2023, DIARIO OFICIAL [D.O.] (Chile).

37. *See id.*

and strengthened existing ones. The ECL also included a series of amendments to Law No. 20,393 on Criminal Liability of Legal Entities,³⁸ which came into force on September 1, 2024. These amendments consist of an increase of the “base crimes” for which legal entities may be criminally liable, as well as the modification of certain criteria related to the attribution of criminal liability.³⁹ They established new requirements to be met by the Crime Prevention Models (CPM), to gain exemption from liability.⁴⁰

Some of the key amendments of the Law No. 20,393 are the following: (a) The catalog of predicate offenses is expanded, and new penalties are contemplated: Companies may be held criminally liable for offenses that fall into any of the four categories described in the ECL, regardless of their size.⁴¹ (b) The scope of application of Law No. 20,393 is extended: Legal corporations and entities under private law, public companies created by law, State-owned companies, universities, political parties, and religious legal persons subject to public law will now be criminally liable.⁴² (c) The conditions for holding legal entities liable are eased: The possibility of criminal liability is extended to any person who holds a position, function or position in the company, or provides services to it by managing its affairs before third parties, with or without its representation, and as long as the perpetration of the act has been favored or facilitated by the lack of an adequate CPM.⁴³ (d) The role of a “Supervisor” is introduced: The court may subject a legal entity to the intervention of a Supervisor, when it determines that the entity has failed to implement or has insufficiently implemented a CPM. The Supervisor has the authority to issue mandatory instructions and impose conditions for the operation of the CPM.⁴⁴ (e) Additional requirements are introduced regarding the CPM: The CPM may operate as a liability exonerating circumstance provided that a series of new requirements are met. Law No. 20,393 establishes that if these controls are effectively implemented, the company may become exempted from criminal liability for crimes committed within the scope of the act.⁴⁵

38. L. No. 20393, Diciembre 2, 2009, DIARIO OFICIAL [D.O.] (Chile).

39. *Id.*

40. See Guillermo Acuña et al., *Amendments to the Corporate Criminal Liability Act Enter into Force*, CAREY: NEWS ALERTS (Sep. 2, 2024), <https://www.carey.cl/en/amendments-to-the-corporate-criminal-liability-act-enter-into-force/> [https://perma.cc/S4BW-UPTG].

41. *Id.*

42. *Id.*

43. See Mauricio Halpern et al., *Alerta Legal: Importantes Modificaciones A La Ley Sobre Responsabilidad Penal De Las Personas Juridicas*, DLA PIPER (May 26, 2023), <https://www.dlapiper.cl/2023/05/26/alerta-legalimportantes-modificaciones-a-la-ley-sobre-responsabilidad-penal-de-las-personas-juridicas/> [https://perma.cc/27XM-Y4R9].

44. Acuña, *supra* note 40.

45. *Id.*

C. CYBERSECURITY FRAMEWORK ACT

On April 8, 2024, Chile enacted Law No. 21,663 on Cybersecurity Framework (the Cybersecurity Act),⁴⁶ which entails the implementation of relevant aspects and changes in cybersecurity, including the following:

1. *New Institutionalality*

The Cybersecurity Act implements a new institutional framework in this area by creating the National Cybersecurity Agency (ANCI), a decentralized public service of a technical and specialized nature. The ANCI's main objectives are to regulate, supervise, and sanction all entities, either public or private, that provide essential services daily to ensure the strengthening of Chile's digital defenses and the protection of data.⁴⁷ To fulfill its purpose, the ANCI is granted various powers and authority, including regulatory authority and supervisory and sanctioning powers, among others.⁴⁸

2. *Scope of Application*

The Cybersecurity Act is applicable to institutions providing "Essential Services" as well as services classified as "Operators of Vital Importance."⁴⁹ Essential Services correspond to several sectors that are at the economic base of the country, such as those that the State Administration Bodies provide, those provided under a concession governed by public law, and those that are provided by private institutions that require a special permit to operate or at least their operation is controlled by an administrative body.⁵⁰

The ANCI will qualify entities as Operators of Vital Importance based on certain criteria and requirements, such as dependence on IT systems and the degree of impact that the interruption of service delivery may have on public order.⁵¹

3. *Cybersecurity Duties and Obligations*

The Cybersecurity Act contemplates specific duties for Operators of Vital Importance, such as implementing an information security system or having specific certifications, but it also establishes general duties applicable on the same terms to

46. L. No. 21663, Abril 8, 2024, DIARIO OFICIAL [D.O.] (Chile).

47. See Guillermo Carey et al., *Cybersecurity Framework Law is Published in the Official Gazette*, CAREY: NEWS ALERTS (Apr. 4, 2024), <https://www.carey.cl/en/framework-law-on-cybersecurity-is-promulgated/> [https://perma.cc/8FKT-L2NN].

48. See *id.*

49. See *id.*

50. See *id.*

51. See Cesar Fuenzalida, *Avanza La Ciberseguridad En Chile: Nueva Ley Marco De Ciberseguridad E Infraestructura Crítica De La Información Es Despachada A Ley*, CENTRO DE INNOVACIÓN UC ANACLETO ANGELINI (Dec. 21, 2023), <https://centrodeinnovacion.uc.cl/noticias/avanza-la-ciberseguridad-en-chile-nueva-ley-marco-de-ciberseguridad-e-infraestructura-critica-de-la-informacion-es-despachada-a-ley/> [https://perma.cc/F7WE-6TBV].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

LATIN AMERICA & CARIBBEAN 49

providers of Essential Services.⁵² Generally, the Operators are obliged to report cyberattacks and cybersecurity incidents within strict deadlines and to permanently apply measures to prevent, report, and resolve cybersecurity incidents, which requires the implementation of the protocols and standards established by the ANCI and the respective business sector regulation thus generally applicable.⁵³

52. *Id.*

53. See Equipo Actualidad Jurídica, *Ley No. 21.633 Conoce Más Sobre La Nueva Ley Marco De Ciberseguridad*, ACTUALIDAD JURÍDICA, (Apr. 15, 2024), <https://actualidadjuridica.doe.cl/ley-n-21-633-conoce-mas-sobre-la-nueva-ley-marco-de-ciberseguridad/> [<https://perma.cc/73NC-SA2P>].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

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International Contracts

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This Article reviews significant international legal developments made in the areas of international contracts law and policy in 2024.

I. Introduction

This Article reviews significant international legal developments in the areas of international contracts law and policy in 2024. In Section II, the article discusses both recent U.S. case law on such diverse topics as choice-of-law clauses in maritime contracts and arbitration of contractual disputes from a federal law perspective, as well as new state legislation in the form of the California AI Transparency Act. Section III discusses a case from the Swedish Supreme Court clarifying the classification of documentation regarding trade usage in Article 9 of the CISG as evidence of factual circumstances rather than a legal opinion. Finally, Section IV discusses recent legislation on franchise law in Indonesia.

II. United States

A. ENFORCEABILITY OF CHOICE-OF-LAW CLAUSES IN MARITIME CONTRACTS IN U.S. COURTS

For many decades, the U.S. Supreme Court has held that choice-of-forum clauses are presumptively enforceable in federal maritime contracts.² On February 21, 2024, in *Great Lakes Ins. SE v. Raiders Retreat Realty Co.*, the Court clarified that choice-of-law provisions in maritime contracts are also presumptively enforceable under federal maritime law, with narrow exceptions.³ In issuing its decision, the unanimous U.S. Supreme Court resolved a split between the federal circuit courts

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2. See generally *Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972).

3. See generally *Great Lakes Ins. SE v. Raiders Retreat Realty Co.*, 601 U.S. 65 (2024).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

52 THE YEAR IN REVIEW

[VOL. 59]

as to the enforceability of such clauses and the scope of its 1955 decision in *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*⁴

At issue in *Great Lakes* was the enforceability of a New York choice-of-law clause in an insurance policy issued by a German insurance company headquartered in the United Kingdom.⁵ The policy covered a boat owned by Raiders Retreat Realty, a Pennsylvania business.⁶ Raiders sued Great Lakes Insurance for declaratory relief and Pennsylvania contract law claims in the U.S. District Court for the Eastern District of Pennsylvania when Great Lakes Insurance denied insurance coverage after the boat ran aground near Fort Lauderdale, Florida.⁷ Although the boat's fire suppression system did not contribute to the accident, Great Lakes Insurance based its coverage denial on the grounds that failing to maintain the system was a breach of the insurance contract.⁸

Enforcing the New York choice-of-law provision, the federal district court rejected Raiders's Pennsylvania law contract claims.⁹ On appeal, the U.S. Court of Appeals for the Third Circuit held that, while presumptively enforceable as a matter of federal maritime law, choice-of-law provisions in maritime contracts must yield to a strong public policy interest of the state in which suit is brought, including Pennsylvania's public policy regarding insurance.¹⁰ It thus ordered the district court to consider whether applying New York contract law would violate Pennsylvania public policy and Pennsylvania law should apply to the contract dispute.¹¹

A unanimous U.S. Supreme Court reversed.¹² Recognizing that under Article III of the U.S. Constitution, federal courts possess authority to create and apply a common maritime law to create a system of maritime law "coextensive with, and operating uniformly in, the whole country,"¹³ the Court held that longstanding precedent had established a federal maritime rule that choice-of-law provisions in maritime contracts are presumptively enforceable.¹⁴ Writing for the Court, Justice Kavanaugh recognized the Court's long line of decisions holding that choice-of-forum clauses in maritime contracts are presumptively enforceable; and the Court held that making the same presumption for choice-of-law clauses serves the same purposes of facilitating maritime commerce by reducing legal uncertainty and lowering costs for commerce that traverses interstate and international boundaries.¹⁵ The Court further noted that the presumptive choice-of-law clauses in maritime insurance contracts allowed both insurers and boat owners to assess

4. See generally *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310 (1955).

5. See *Great Lakes*, 601 U.S. at 65-67.

6. See *id.*

7. See *id.*

8. See *id.* at 68-69.

9. See *id.*

10. See *id.*

11. See *Great Lakes*, 601 U.S. at 65-67.

12. See *id.* at 79.

13. *Id.* at 69.

14. See *id.* at 70.

15. See *id.* at 72.

their risks and take precautions in advance, thus lowering the overall price and accessibility of such insurance.¹⁶

In reaching its decision, the Court rejected Raiders's arguments that the Court's 1955 decision in *Wilburn*¹⁷ precluded the application of a uniform federal presumption of enforcing choice-of-law clauses.¹⁸ The Court held that the *Wilburn* decision did not involve a choice-of-law provision but instead simply determined what substantive rule applied when a party breached a warranty in a marine insurance contract.¹⁹ The Court recognized that in *Wilburn* it had "concluded that no 'established federal admiralty rule governed the warranty issue . . . because states historically regulated insurance and because federal courts were poorly positioned to 'unify insurance law on a nationwide basis.'"²⁰ It stated, however, that its decision in *Wilburn* had not prevented it from concluding in other cases that forum-selection clauses are presumptively enforceable.²¹ The Court noted that having a similar presumption for the enforcement of choice-of-law clauses did not involve a state's traditional responsibility for regulating insurance; it just stated that the parties can state what law will apply.²²

Continuing to cite the need for uniformity, the Court not only refused to create different rules for presumptive enforcement of forum selection and choice-of-law clauses in maritime contracts but also refused to create an exception for marine insurance contracts as opposed to other types of maritime contracts.²³

While finding that choice-of-law clauses are presumptively enforceable as a matter of federal law, the Court stated that exceptions to such a presumption do exist.²⁴ It noted that the parties to the case agreed that the courts should disregard choice-of-law clauses when "the chosen law would contravene a controlling federal state . . . or conflict with an established federal maritime policy."²⁵ The Court further noted that the parties agreed that the courts may disregard choice-of-law clauses where there is no furnished reasonable basis for the clause, for example, where there was no rational basis for choosing the law of a distant foreign country.²⁶ But the Court stated that "the 'no reasonable basis' exception must be applied with

16. See *id.*

17. See generally *Wilburn Boat*, 348 U.S. 310.

18. See *Great Lakes*, 601 U.S. at 73.

19. See *id.*

20. See *id.*

21. See *id.*

22. See *id.* Justice Thomas issued a lengthy explanation concurring with Justice Kavanaugh's unanimous opinion for the Court but explained how his opinion in *Wilburn Boat* "rests on flawed premises" and is "at odds with the fundamental precept of admiralty law." *Id.* at 80. He advised that "[l]itigants and courts applying *Wilburn Boat* in the future should not ignore" the fact that the "Court has already retreated from *Wilburn Boat*'s unsound holding, limiting it to local disputes" and that "[l]itigants and courts should heed our instruction that general maritime law applies in maritime contract disputes unless they 'so implicate local interest as to beckon interpretation by state law.'" *Great Lakes*, 601 U.S. at 80, 86.

23. See *id.* at 75-76.

24. *Id.* at 76.

25. See *id.*

26. See *id.* at 76-77.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

54 THE YEAR IN REVIEW

[VOL. 59]

substantial deference to the contracting parties, recognizing that maritime actors may sometimes choose the law of a specific jurisdiction because, for example, that jurisdiction's law is 'well developed, well known, and well regarded.'"²⁷

The Court also rejected Raiders's argument that federal maritime law should recognize an additional exception when enforcing the designated contractual state law would contravene the fundamental public policy of the State with the greatest interest in the dispute.²⁸ The Court noted that none of its other cases had ever disregarded "a choice-of-law provision in a maritime contract on the ground that it would violate a state law."²⁹ It further interpreted language in its forum-selection clause cases stating that such clauses "should be held unenforceable if enforcement would contravene a strong public policy of the forum in which suit is brought" as referring to possible conflicts between federal maritime law and a foreign country's law, not state law.³⁰ The Court stated:

A federal presumption of enforceability would not be much of a presumption if it could be routinely swept aside based on 50 States' public policy determinations. The ensuing disuniformity and uncertainty caused by such an approach would undermine the fundamental purpose of choice-of-law clauses in maritime contracts: uniform and stable rules for maritime actors.³¹

For similar reasons, the Court rejected a suggestion that it adopt the choice-of-law approach set forth in section 187(2)(b) of the Restatement (Second) of Conflict of Laws, on the grounds that the rule was a poor fit for federal maritime law cases or conflicts between federal-state laws, because the Restatement rule relates to interstate conflicts and not federal-state law conflicts, including maritime contract law conflicts.³²

B. U.S. SUPREME COURT CLARIFIES WHEN COURTS, NOT ARBITRATORS, SHOULD DECIDE QUESTIONS INVOLVING THE ARBITRATION OF CONTRACTUAL DISPUTES

In 2024, the U.S. Supreme Court continued its trend of establishing the guidelines governing the enforceability of arbitration agreements under the Federal Arbitration Act (FAA).³³ On May 23, 2024, the Court issued its decision in *Coinbase, Inc. v. Suski*,³⁴ which resolved the question of whether a court or an arbitrator should determine the arbitrability of contractual disputes when a dispute involves two agreements, only one of which requires the arbitration of disputes.³⁵

27. *Id.* at 77.

28. *See Great Lakes*, 601 U.S. 66.

29. *Id.* at 78.

30. *Id.* at 77-78.

31. *Id.* at 77.

32. *See id.* at 79; *see also* Restatement (Second) of Conflict of Laws § 187(2)(b) (A.L.I. 1989).

33. 9 U.S.C. §§ 1 et seq.

34. *See generally* *Coinbase, Inc. v. Suski*, 602 U.S. 143 (2024).

35. *See generally id.*

In prior decisions, the U.S. Supreme Court has held that contractual disputes must be sent to arbitration if the contract provides for arbitration and the making of the agreement is not at issue; but that if a contract contains an arbitration provision, the question of arbitrability of the dispute must be resolved first.³⁶ The Court has further held that contractual arbitration clauses can also delegate to an arbitrator, not a court, the decision as to whether a contractual dispute is subject to arbitration.³⁷

In *Coinbase*, the Court addressed what agreement governs the determination of the arbitrability of a dispute if the parties have entered into multiple conflicting agreements, one providing that arbitration and the determination that a dispute is arbitrable is to be determined by an arbitrator; the second saying that the courts have exclusive jurisdiction to resolve any disputes.³⁸

Justice Jackson wrote for a unanimous Court, with a separate concurrence by Judge Gorsuch, the Court held that a court, not an arbitrator, must decide whether a subsequent contract without an arbitration clause supersedes an earlier arbitration agreement that delegates the question of whether a dispute should be arbitrated to an arbitrator.³⁹

Coinbase involved the common situation where the parties to the dispute had entered into two separate contracts.⁴⁰ Coinbase, Inc., operated a cryptocurrency exchange platform. The first contract was the Coinbase User Agreement that was used to create an account with Coinbase.⁴¹ The second contract related to a Coinbase-offered sweepstakes in which users could enter for a chance to win Dogecoin, a cryptocurrency.⁴²

After the sweepstakes concluded, plaintiffs filed a class action lawsuit in California alleging that the sweepstakes violated California law.⁴³ Coinbase moved in the lower court to compel arbitration of the dispute on the basis of the User Agreement arbitration clause, which provided:

This Arbitration Agreement includes, without limitation, disputes arising out of or related to the interpretation or application of the Arbitration Agreement, including the enforceability, revocability, scope, or validity of the Arbitration Agreement or any portion of the Arbitration Agreement. All such matters shall be decided by an arbitrator and not by a court or judge.⁴⁴

But the second contract, which the parties had entered into with respect to the sweepstakes, provided that:

36. See *id.*; *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938 (1995); *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63 (2019); *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63 (2010).

37. See *Coinbase*, 602 U.S. at 147–48.

38. See *id.*

39. *Id.* at 145, 152.

40. *Id.*

41. *Id.* at 146.

42. *Coinbase*, 602 U.S. at 146–147.

43. *Id.*

44. *Id.* at 144.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

56 THE YEAR IN REVIEW

[VOL. 59]

The California courts (state and federal) shall have sole jurisdiction of any controversies regarding the [sweep-stakes] promotion and the laws of the state of California shall govern the promotion. Each entrant waives any and all objections to jurisdiction and venue in those courts for any reason and hereby submits to the jurisdiction of those courts.⁴⁵

Both the District Court and the U.S. Court of Appeals for the Ninth Circuit held that the User Agreement arbitration clause conflicted with the forum selection clause, and that under California contract law, the Official Rules of the sweepstakes agreement superseded the User Agreement.⁴⁶ The Court denied Coinbase's claims that the parties were required to arbitrate their dispute, and that an arbitrator, not a court, was required to make that determination.⁴⁷

The U.S. Supreme Court granted certiorari to answer the question of whether a judge or an arbitrator should have decided the question of which contract governed the question of arbitrability.⁴⁸ The Court affirmed the judgment of the Ninth Circuit and held that the arbitration clause and its delegation provisions had been superseded.⁴⁹ The U.S. Supreme Court emphasized that arbitration is a matter of contract and consent; the Court held that before either a delegation provision or a forum selection clause can be enforced when there are two conflicting contract dispute resolution clauses, a court must first decide what the parties have agreed to and which contract controls.⁵⁰

With respect to Coinbase's argument that the parties had agreed in their User Agreement to have an arbitrator decide the question of arbitrability the Court stated that it had previously explained that "courts should not assume that the parties agreed to arbitrate arbitrability unless there is clear and unmistakable evidence that they did so" and that before referring a dispute to arbitration a court must determine whether a valid arbitration agreement exists.⁵¹

Rejecting Coinbase's argument that its first User Agreement controlled the question of arbitrability, including disputes involving subsequent contracts, the Court found that the question of whether the User Agreement's arbitration provisions applied to the subsequent contract was itself a dispute over whether there was an agreement to arbitrate that should be answered by a court.⁵²

The Court also rejected Coinbase's arguments that under the U.S. Supreme Court's decisions involving the severability principle, the Ninth Circuit should have isolated the User's Agreement's delegation provision and considered only arguments specific to that provision.⁵³ Assuming without deciding that the principle was implicated in the case, Justice Jackson wrote that:

45. *Id.*

46. *Id.* at 146.

47. *Id.*

48. *Coinbase*, 602 U.S. at 147.

49. *Id.* at 151.

50. *Id.*

51. *Id.* at 148 (citing *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 945 (1995)).

52. *Coinbase*, 602 U.S. at 150.

53. *Id.*

The severability principle establishes that a party seeking to avoid arbitration must directly challenge the arbitration or delegation clause, not just the contract as a whole. But this rule does not require that a party challenge only the arbitration or delegation provision. Rather, where a challenge applies “equally” to the whole contract and to an arbitration or delegation provision, a court must address that challenge.⁵⁴

The Court further disagreed with Coinbase’s arguments that its ruling would create chaos by inviting challenges to contractual delegation clauses.⁵⁵ It held that:

In cases where parties have agreed to only one contract, and that contract contains an arbitration clause with a delegation provision, then, absent a successful challenge to the delegation provision, courts must send all arbitrability disputes to arbitration under the Federal Arbitration Act (FAA); but, where parties have agreed to two contracts—one sending arbitrability disputes to arbitration, and the other either explicitly or implicitly sending arbitrability disputes to the courts—a court must decide which contract governs.

. . . .

. . . To hold otherwise would be to impermissibly elevate a delegation provision over other forms of contract.⁵⁶

In keeping with the Court’s overall guidance that questions of arbitrability of disputes are in essence a matter of basic rules of contract interpretation, Justice Gorsuch wrote a separate concurrence.⁵⁷ He hinted that Coinbase could have avoided the issues presented in the case through the use of careful contractual drafting, writing:

Just imagine a master contract providing that “all disputes arising out of or related to this or future agreements between the parties, including questions concerning whether a dispute should be routed to arbitration, shall be decided by an arbitrator.” Absent some later amendment, a provision like that would seem to require a court to step aside.⁵⁸

C. CALIFORNIA AI TRANSPARENCY ACT

As states across the United States race to address rapid advancements in Artificial Intelligence (AI), California took a step forward on September 20, 2024 when California Governor Gavin Newsom signed several AI bills into law, including Senate Bill 942 known as the California AI Transparency Act, which will be added

54. *Id.* at 150–151.

55. *Id.* at 143.

56. *Id.* (citing *Rent-A-Center West, Inc. v. Jackson*, 561 U.S. 63, 72 (2010)).

57. *Coinbase*, 602 U.S. at 152–153 (Gorsuch, J., concurring).

58. *Id.* at 153.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

58 THE YEAR IN REVIEW

[VOL. 59]

to Division 8 of the California Business and Professions Code.⁵⁹ The California AI Transparency Act goes into effect January 1, 2026 and is the nation's most comprehensive and specific AI watermarking law.⁶⁰

For the purpose of informing that coordinated plan, existing [California] law requires the secretary [of Government Operations] to evaluate, among other things, the impact of the proliferation of deepfakes, defined to mean audio or visual content that has been generated or manipulated by artificial intelligence that would falsely appear to be authentic or truthful and that features depictions of people appearing to say or do things they did not say or do without their consent, on state government, California-based businesses, and residents of the state.⁶¹

The California AI Transparency Act would, among other things, require “covered provider,” defined as “a person that creates, codes, or otherwise produces a generative AI system that has over 1,000,000 monthly visitors or users and is publicly accessible within the geographic boundaries of the state.”⁶² To make available an AI detection tool at no cost to the user that meets certain criteria, including that the AI detection tool is publicly accessible.⁶³ A generative AI system or GenAI system means an artificial intelligence that can generate derived synthetic content, including text, images, video, and audio, that emulates the structure and characteristics of the systems training data.⁶⁴

Additionally, covered providers will be required to provide users with both “latent” disclosures in AI-generated content and an option of including a “manifest” disclosure in such content.⁶⁵

Latent disclosures are those that are not manifest but are instead present in the metadata of AI-generated content.⁶⁶ This means that a covered provider shall include a disclosure in AI-generated content created by the covered provider's GenAI system that, among other things, conveys certain information about the content's origin.⁶⁷ This can be provided either directly or through a link to a website and includes information such as the name of the covered provider, the name and version number of the GenAI system that created or altered the content, the time and date of the content's creation or alteration, and a unique identifier.⁶⁸

Manifest Disclosure means the covered provider shall offer users a disclosure in content created or altered by the covered provider's GenAI system that, among

59. S.B. 942, 2023–2024 Leg., Reg. Sess. (Cal. 2024) (to be codified at CAL. BUS. & PROF. CODE § 22757).

60. *Id.* at 2.

61. *Id.* at 1.

62. *Id.* (to be codified at CAL. BUS. & PROF. CODE § 22757.1(b)).

63. *Id.*

64. *Id.* (to be codified at CAL. BUS. & PROF. CODE § 22757.1(c)).

65. S.B. 942, 2023–2024 Leg., Reg. Sess. (Cal. 2024) (to be codified at CAL. BUS. & PROF. CODE § 22757.1(d)).

66. *Id.* (to be codified at CAL. BUS. & PROF. CODE § 22757.1(e)).

67. *Id.* (to be codified at CAL. BUS. & PROF. CODE § 22757.1(i)).

68. *Id.* (to be codified at CAL. BUS. & PROF. CODE §§ 22757.3(b)(1)–(2)).

other things, identifies AI-generated content; is clear and conspicuous; is appropriate for the content's medium; and is comprehensible to a reasonable person.⁶⁹

Lastly, covered providers that license their GenAI systems to third parties will be required to ensure that licensees maintain these disclosure requirements.⁷⁰ If it is discovered that a licensee has modified a licensed GenAI system so that it is no longer capable of including the disclosures described above, the covered provider shall revoke licenses granted within ninety-six hours and the licensee shall cease using the licensed GenAI system.⁷¹

Companies developing GenAI systems should carefully consider these technical requirements as they invest time and resources to comply with the law. Both licensors and licensees of covered AI systems may also want to update their contracts to incorporate these new contractual obligations. But note that the California AI Transparency Act does not apply to any product, service, internet website, or application that provides exclusively non-user-generated video game, television, streaming, movie, or interactive experiences.⁷²

This bill would hold: "A covered provider that violates [these provisions] shall be liable for a civil penalty in the amount of five thousand dollars (\$5,000) per violation to be collected in a civil action filed by the Attorney General, a city attorney, or a county counsel."⁷³ For a violation by a third-party licensee of the requirement to cease using a licensed GenAI system after the license of the system has been revoked, this bill would authorize the Attorney General, a county counsel, or a city attorney to bring a civil action for injunctive relief and reasonable attorney's fees and costs.⁷⁴

III. Sweden: Invocation of Trade Usage Pursuant to Article 9 of CISG in Swedish Litigation

In November 2024, the Swedish Supreme Court ruled⁷⁵ on the admissibility of documentation regarding trade usage pursuant to Article 9 of the United Nations Convention on Contracts for the International Sale of Goods (CISG).⁷⁶

At issue in the case was a dispute between a Norwegian and a Swedish company regarding the right to claim compensation for defective purchased timber goods.⁷⁷ One of the key legal issues was whether the purchaser should have inspected the

69. *Id.* (to be codified at CAL. BUS. & PROF. CODE § 22757.3(a)).

70. *Id.* (to be codified at CAL. BUS. & PROF. CODE § 22757.3(c)).

71. S.B. 942, 2023–2024 Leg., Reg. Sess. (Cal. 2024) (to be codified at CAL. BUS. & PROF. CODE §§ 22757.3(c)(1)–(2)).

72. *Id.* (to be codified at CAL. BUS. & PROF. CODE § 22757.5).

73. *Id.* (to be codified at CAL. BUS. & PROF. CODE § 22757.4(a)(1)).

74. *Id.* (to be codified at CAL. BUS. & PROF. CODE §§ 22757.4(c)(1)–(2)).

75. Högsta Domstolen [HD] [Supreme Court] 2024-11-15 Ö 5269-23 (Swed.), <https://www.domstol.se/globalassets/filer/domstol/hogstodomstolen/avgoranden/2024/t-5269-23-delbeslut.pdf> [<https://perma.cc/9FXW-JW2S>].

76. *Id.* ¶ 7.

77. *Id.* ¶ 1.

goods and if the purchaser had notified the seller of the defects within a reasonable time.⁷⁸ During the process in the Swedish Supreme Court, the seller invoked a written opinion from a trade organization regarding trade usage, which contained certain statements on common procedures within the timber trade and the legal consequences if a party fails to follow said procedures.⁷⁹

The buyer argued that the opinion should be considered as evidence and that, because the seller had not invoked the evidence in the court of first instance, the evidence was inadmissible in the Swedish Supreme Court under applicable Swedish procedural rules.⁸⁰ This was disputed by the seller, who maintained that the document was merely a legal opinion confirming what constitutes good market practice within the trade and thus not to be considered as evidence.⁸¹ It had been submitted to the Appellate Court during the proceedings there and had been invoked as a legal opinion, but not as evidence, in that court.⁸²

Swedish procedural law generally prohibits new evidence, i.e., evidence that has not been presented in the court of first instance, to be presented in a dispositive litigation proceeding in an appellate court or the Supreme Court.⁸³ Such evidence is allowed only if the party invoking the evidence presents a plausible reason for not being able to present the evidence in the lower court or if there is otherwise good reason why the party was unable to do so.⁸⁴ The Swedish Supreme Court noted that the rules are mandatory and shall be considered by the courts whether a party invokes them or not.⁸⁵

To determine whether the document was admissible, the Swedish Supreme Court first needed to decide whether it should be considered as evidence or a legal opinion.⁸⁶ A party that argues that a certain trade usage has been established must, as a rule, also prove that this is the case, as stated by the court.⁸⁷ The Swedish Supreme Court continued by establishing, by way of reference to Chapter 35, Section 6 of the Procedural Code, that each party is responsible for submitting the relevant documents and clearly stating whether it wishes to invoke the documents in question as evidence.⁸⁸ It is not, however, according to the Swedish Supreme Court, up to the party to decide how documents submitted in the litigation are to be legally characterised, but to the court.⁸⁹ Documentation that serves to prove a

78. *Id.*

79. *Id.* ¶ 2.

80. *Id.* ¶ 4.

81. Högsta Domstolen [HD] [Supreme Court] 2024-11-15 Ö 5269-23 (Swed.).

82. *Id.*

83. Rättegångsbalken [RB] [Code of Judicial Procedure] 55:13, ¶ 1 (Swed.) https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/rattgangsbalk-194274-0_sfs-1942-740/ (last visited on Dec. 1, 2024) [<https://perma.cc/8QJJ-DMZB>].

84. *See id.*

85. Högsta Domstolen [HD] [Supreme Court] 5269-23, ¶ 12.

86. *Id.*

87. *Id.* ¶ 8.

88. *Id.* ¶ 9.

89. *Id.* ¶ 10.

disputed matter of fact shall be considered evidence and cannot be invoked as a legal opinion.⁹⁰

In conclusion, the Swedish Supreme Court found that the opinion of the trade organization contained statements regarding factual circumstances in relation to trade usage that, if admissible, could serve as evidence of these factual circumstances.⁹¹ Consequently, those circumstances, if proven, might or might not have a bearing on the legal assessment of the case.⁹² In this case, it was undisputed that the seller had neither invoked the document as evidence in the Appellate Court nor provided any explanation or excuse for failing to do so.⁹³ There was also no indication that the Appellate Court had considered the content of the document as relevant for the outcome of the proceedings in that court.⁹⁴ Although a court should generally strive to clarify the parties' intentions regarding the body of evidence it wishes to invoke, the Swedish Supreme Court therefore found no reason to assume that there had been a miscarriage of justice.⁹⁵ The document was considered as evidence and was dismissed from use in the Swedish Supreme Court proceedings.⁹⁶

IV. Indonesia: New Franchise Laws

In September 2024, the new Indonesian franchise law, Government Regulation No. 35 of 2024 (New-GR 35/2024) went into effect and replaced the existing Indonesian franchise law, Government Regulation No. 42 of 2007 (Old-GR 42/2007).⁹⁷ The following is a summary of the key provisions of New-GR 35/2024.⁹⁸

A. REGISTERED INTELLECTUAL PROPERTY RIGHTS

To sell franchises in Indonesia, the franchisor must have registered its intellectual property related to the franchised business with the appropriate government authority.⁹⁹ This is a stricter requirement compared to those under the prior rule, Old-GR 42/2007, pursuant to which the franchisor could start selling franchises in

90. *Id.*

91. Högsta Domstolen [HD] [Supreme Court] 5269-23, ¶ 10.

92. *Id.* ¶ 14.

93. *Id.* ¶ 15.

94. *Id.*

95. *See id.* ¶ 17.

96. *Id.* ¶¶ 15-17.

97. *Peraturan Pemerintah Republik Indonesia Nomor 35 Tahun 2024 Tentang Waralaba* [Government Regulation of the Republic of Indonesia No. 35 of 2024 Concerning Franchising] L.N. No. 188, T.L.N. No. 6986 (Sept. 2, 2024) (Indon.).

98. *See id.*

99. *Id.* arts. 4(2), 4(7); *see* Sher Hann Chua et al., *10 Things to Note about Indonesia's New Franchise Regulations*, LINKLATERS (Oct. 3, 2024), <https://techinsights.linklaters.com/post/102jkxs/10-things-to-note-about-indonesias-new-franchise-regulations> [<https://perma.cc/TU5V-VV8F>].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

62 THE YEAR IN REVIEW

[VOL. 59]

Indonesia even when its intellectual property rights were still in the process of registration.¹⁰⁰

B. REGISTRATION

To sell franchises in Indonesia, both foreign and domestic franchisors must obtain a registration certificate from the Indonesian Ministry of Trade.¹⁰¹ Applications for a franchise registration certificate by foreign franchisors must include a copy of the franchise offering prospectus, a legalized or apostilled copies of the franchisor's certificate of incorporation, good standing certificate, business license issued by the relevant authorities in its country of origin, and an official letter confirming the operation of the franchise business issued by the Trade Attaché of Indonesia or the Indonesian Embassy in the franchisor's country of origin.¹⁰²

C. CERTAIN KEY MANDATORY PROVISIONS IN FRANCHISE AGREEMENT¹⁰³

In addition to including certain mandatory provisions in the franchise agreement that were required under Old-GR 42/2007, under New-GR 35/2024, among other things, the franchise agreement must include a description of the franchised business's operational standards and procedures, such as human resource management, administration, operational standards and management, site selection, staffing, marketing, etc.; franchisor's guarantee of compensation and/or rights of the franchisee in the event of termination by franchisor or on account of franchisor's breach or default, representation that the franchisor's intellectual property rights are protected; and franchisor's representation and warranty of continuous support to the franchisee.¹⁰⁴ Pertinently, New-GR 35/2024 also requires franchise agreements to provide for Indonesian law as the governing law of the agreement.¹⁰⁵

D. FRANCHISE OFFERING PROSPECTUS

Similar to the United States and many other international jurisdictions, franchisors in Indonesia must provide a copy of a franchise offering prospectus to

100. See Chua et al., *supra* note 99.

101. *Peraturan Pemerintah Republik Indonesia Nomor 35 Tahun 2024 Tentang Waralaba* [Government Regulation of the Republic of Indonesia No. 35 of 2024 Concerning Franchising] L.N. No. 188, T.L.N. No. 6986, arts. 4(2), 13(1) (Sept. 2, 2024) (Indon.).

102. See Winnie Yamashita Rolindrawan, *New Rules for Franchising in Indonesia: What You Need to Know About Government Regulation No. 35 of 2024*, LEXOLOGY (Oct. 17, 2024), <https://www.lexology.com/library/detail.aspx?g=a6099f9a-47be-4fe0-81ed-17b62d09fa84> [<https://perma.cc/5H8K-5VRQ>].

103. *Peraturan Pemerintah Republik Indonesia Nomor 35 Tahun 2024 Tentang Waralaba* [Government Regulation of the Republic of Indonesia No. 35 of 2024 Concerning Franchising] L.N. No. 188, T.L.N. No. 6986, art. 6(2) (Sept. 2, 2024) (Indon.).

104. See Rolindrawan, *supra* note 102.

105. See *id.*

prospective franchisees at least fourteen calendar days prior to signing the franchise agreement.¹⁰⁶ The franchise offering prospectus must, among other things, include the following information: name and address of the franchisor and type of entity and country of formation; description of prior business history of the franchisor; description of the organizational structure of the franchisor; description of the business systems i.e., the franchised business's operational standards and procedures, such as human resource management, administration, operational standards and management, site selection, staffing, marketing, etc.; franchisor's financial statements for two fiscal years immediately preceding the issuance of the prospectus; description of the number of franchised outlets and list of franchisees; description of the rights and obligations of the franchisor and the franchisees; and copies of the franchisor's intellectual property registration certificate or letter intellectual property registration.¹⁰⁷

E. FRANCHISE LOGO

Both franchisors and franchisees must use the Indonesian Ministry of Trade's official franchise logo, which is granted to them after the obtain registration certificate as described above.¹⁰⁸ This logo must be displayed in a visible and prominent location at all franchised outlets and in the franchisor's principal office in Indonesia.¹⁰⁹ Failure to do so may attract administrative sanctions such as written warnings, temporary business suspension, or revocation of registration certificate.¹¹⁰

106. *Peraturan Remerintah Republik Indonesia Nomor 35 Tahun 2024 Tentang Waralaba* [Government Regulation of the Republic of Indonesia No. 35 of 2024 Concerning Franchising] L.N. No. 188, T.L.N. No. 6986, art. 5(1) (Sept. 2, 2024) (Indon.).

107. *See id.*

108. *Peraturan Remerintah Republik Indonesia Nomor 35 Tahun 2024 Tentang Waralaba* [Government Regulation of the Republic of Indonesia No. 35 of 2024 Concerning Franchising] L.N. No. 188, T.L.N. No. 6986, arts. 21-25 (Sept. 2, 2024) (Indon.).

109. *See id.*

110. *See id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

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International Energy and Environmental Law

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This article surveys significant legal developments in international energy and environmental law in 2024.

I. Angola

On February 2, 2024, Presidential Decree 50/24 published the Law of Environmental Conservation Areas.¹ The new statute covers “the creation, classification, organization, management, sustainable use, and supervision of Environmental Conservation Areas.”² While enacted to protect biodiversity and establish specific ecosystem management measures, the statute also regulates exploitation rights and the construction and management of infrastructures in Environmental Conservation Areas.³ In addition, the Regulations on Mining and Oil and Gas Activities in Protected Areas were approved through Presidential Decree 51/24.⁴

On April 23, 2024, the Law on Combating the Smuggling of Petroleum Products was also published.⁵ This new law, which came into force on the date of its publication, “criminalizes conducts related to the trafficking of petroleum products with penalties of up to 12 years in prison, and establishes effective mechanisms for

* Mariana Ardizzone contributed to the updates from Argentina. Joseph Arop contributed to the updates from France, Germany, New Zealand, and Romania. Luis Miranda, Ricardo Alves Silva, Sara Frazão, and José Diogo Sampaio contributed to the updates from Angola, Gabon, and Portugal.

1. *Accession to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, MIRANDAALLIANCE: LEGAL NEWS ANGOLA (Mar. 5, 2024), <https://www.mirandalawfirm.com/download/2482/b61b74d13883de67f72d99a7a69cb0ef/Angola%20-%20LegalNews%20-%20January%20and%20February%202024.pdf> [https://perma.cc/N2GA-YPCM].

2. *Id.*

3. *Id.*

4. *Id.*

5. *Privatization of BODIVA, ENSA, DAMER GRÁFICA and TV ZIMBO*, MIRANDAALLIANCE: LEGAL NEWS ANGOLA (May 6, 2024), <https://www.mirandalawfirm.com/download/2507/4b2e6279a101b3ef79be19a186f23866/Angola%20-%20LegalNews%20-%20March%20and%20April%202024%20.pdf> [https://perma.cc/9L24-QKQB].

declaring loss of instruments, products, and advantages resulting from criminal activity.”⁶

In addition, employing Resolution 23/24, Angola approved the ratification of the Mining Sector Protocol signed between the Republic of Angola and the Southern African Development Community (SADC).⁷ The Protocol “aims to encourage the creation of a sound investment climate in the region, fostering the development of the mining sector and the implementation of projects developed between Angola and the SADC member states.”⁸

II. Argentina

Argentina’s first libertarian administration⁹ enacted the National Law of “Bases and Starting Points for the Freedom of Argentines” 27.742.¹⁰ The law reduces state intervention and promotes economic freedom by reforming various statutes, including the Hydrocarbons Law 17.319,¹¹ the Natural Gas Regulatory Framework Law 24.076,¹² and the Hydrocarbons Sovereignty Law 26,741.¹³ The law also introduces the cornerstone Incentives Regime for Large Investments (by its Spanish acronym, RIGI).¹⁴

Amendments to the National Hydrocarbons Legal Framework include:

1. Shifting market policy from domestic market self-sufficiency¹⁵ to maximizing hydrocarbon income¹⁶ and satisfying (ensuring) supply.¹⁷ Moreover, the National Executive Branch may not intervene in or fix marketing prices in the domestic market.¹⁸
2. Increasing export and import freedom, subject to future regulations.¹⁹

6. *Id.*

7. *Id.*

8. *Id.*

9. See Jack Nicas, *Argentina Elects Javier Milei in Victory for the Far Right*, N.Y. TIMES (Nov. 19, 2023), <https://www.nytimes.com/2023/11/19/world/americas/argentina-election-javier-milei.html> [<https://perma.cc/4MYG-7XDN>].

10. L. No. 27.742, July 27, 2024, [35.456] B.O. 4 (Arg.).

11. *Id.* at tit. VI, ch. I.

12. *Id.* at tit. VI, ch. II.

13. *Id.* at tit. VI, ch. III.

14. *Id.* at tit. VII.

15. See generally Aldea Global Insights, *Argentina’s New Energy Policy*, LINKEDIN (April 29, 2024), <https://www.linkedin.com/pulse/argentinas-new-energy-policy-aldea-global-insights-bnldc> [<https://perma.cc/RQA8-U5TY>]; cf. L. No. 27.741 (domestic market self-sufficiency was the previous policy under Section 6 of Hydrocarbons L. 17.319 and also Section 1 of Nat’l L. 26.741).

16. L. No. 27.742, July 27, 2024, [35.456] B.O. 4 (Arg.).

17. *Id.* at art. 159.

18. *Id.* at art. 105.

19. *Id.* at art. 106.

3. Removing the right to evergreen extensions and renegotiations at the end of concession periods for all agreements except for current concession holders whose agreements included such rights.²⁰ Instead, concessions will be subject to public tenders one year before expiration.²¹ Bidding terms for new concessions can establish a right to a one-time 10-year extension.²² In addition, conversions of conventional concessions to unconventional concessions will only be allowed until December 31, 2028.²³
4. Introducing new permits and concessions allowing bidders to compete on royalty values.²⁴
5. Replacing Transportation Concessions with Transportation Authorizations going forward.²⁵ But the terms of pre-existing Transportation Concessions were preserved.²⁶
6. Creating Processing Permits to enable private ownership of projects and/or facilities for conditioning, separation, fractionation, liquefaction, and industrialization.²⁷
7. Creating Natural Gas Underground Storage Authorizations to enable the injection, storage, and removal of natural gas from depleted reservoirs.²⁸

Amendments to the Natural Gas Regulatory Framework Law 24.076 include:

1. Eliminating the requirement for National Executive Branch authorization for natural gas exports through pipelines, subject to regulations to be issued.²⁹
2. Requiring the National Secretary of Energy to conduct a study and provide a statement regarding the availability of natural gas resources eligible for liquefaction and export.³⁰
3. Permitting carriers and distributors to acquire, build, operate, and manage natural gas storage facilities.³¹

The new law also introduced the Incentives Regime for Large Investments (RIGI).³² The RIGI is designed to attract large-scale investments in new and existing

20. *Id.* at art. 115.

21. *Id.* at art. 126.

22. L. No. 27.742, art. 115, July 27, 2024, [35.456] B.O. 4 (Arg.).

23. *Id.* at art. 111.

24. *Id.* at art. 125.

25. *Id.* at arts. 117–22.

26. *Id.* at art. 119 ¶ 2.

27. *Id.* at arts. 119–121.

28. L. No. 27.742, art. 123, July 27, 2024, [35.456] B.O. 4 (Arg.).

29. *Id.* at art. 153.

30. *Id.* at art. 154.

31. *Id.* at art. 156.

32. See L. No. 27.742, July 27, 2024, [35.456] B.O. 4 (Arg.).

projects across various sectors, including “forestry, tourism, infrastructure, mining, technology, steel, energy, and oil and gas.”³³ These investments can consist of direct investment in assets through special purpose vehicles³⁴ or corporate acquisitions that meet certain conditions.³⁵ To qualify for RIGI, investors must invest a minimum of \$200 million within the first two years.³⁶ RIGI offers tax,³⁷ customs,³⁸ and foreign exchange³⁹ incentives, along with a thirty-year stability guarantee.⁴⁰ RIGI also provides protection through arbitration under CPA, ICC, or ICSID rules.⁴¹

III. France

In January 2024, a new French energy bill favoring nuclear power over renewables was set to go before the Council of Ministers and then to lawmakers.⁴² The bill reaffirms France’s commitment to nuclear energy as essential for “energy sovereignty” and proposes building between six and fourteen new reactors to meet climate goals and transition to clean energy.⁴³ While it supports nuclear expansion, unlike prior legislation, the bill lacks specific targets for renewable sources, such as wind and solar.⁴⁴ Government officials maintain that policymakers will establish renewable targets later, but environmental advocates argue the bill is a step backward, citing the absence of renewable targets and energy consumption reduction measures.⁴⁵

In addition, a new tax credit—C3IV—came into effect in France under the Finance Bill for 2024 to encourage green energy investment.⁴⁶ The C3IV credit targets companies investing in strategic sectors like wind turbines, batteries, solar panels, and heat pumps.⁴⁷ It allows companies to deduct between twenty percent and sixty percent of qualifying expenses, including tangible assets (e.g., land,

33. *Id.* at art. 167.

34. *Id.* at art. 169.

35. *Id.* at art. 174 ¶ b.

36. *Id.* at art. 173.

37. *Id.* at tit. VII, ch. IV.

38. L. No. 27.742, ch. IV, July 27, 2024, [35.456] B.O. 4 (Arg.).

39. *Id.* at tit. VI.

40. *Id.* at art. 201.

41. *Id.* at art. 221.

42. David Dalton, *France/Energy Bill that Favours Nuclear Set to Go Before Council of Ministers*, NUCNET (Jan. 11, 2024), <https://www.nucnet.org/news/energy-bill-that-favours-nuclear-set-to-go-before-council-of-ministers-14-2024> [https://perma.cc/FP9R-C4RM].

43. Nathalie Alonso and Catherine Hours, *France Drops Renewables Targets in New Energy Bill*, TECH XPLORE (Jan. 9, 2024), <https://techxplore.com/news/2024-01-france-renewables-energy-bill.html> [https://perma.cc/J3QP-N9JW].

44. *Id.*

45. *Id.*

46. Véronique Millischer & Johanna Da Costa, *The Entry into Force in France of a New Tax Credit for Investment in Green Industry*, INT’L BAR ASS’N (Feb. 2, 2024), <https://www.ibanet.org/entry-into-force-in-france-of-a-new-tax-credit-for-investment-in-green-industry> [https://perma.cc/VE5G-YQHM].

47. *Id.*

buildings, equipment) and intangible assets (e.g., patents, licenses, IP), depending on company size and investment location.⁴⁸ But the total amount of the tax credit is capped between €150 and €350 million per fiscal year, depending on investment location.⁴⁹ The unused credits will be directly refundable, providing immediate cash flow benefits.⁵⁰ Companies are eligible for the tax credit if they do not simply relocate the project from another European Union (EU) country, commit to maintaining the investment for at least five years, and obtain a ruling from the French tax authorities.⁵¹

IV. Gabon

Decree 0123/PR/MP reorganized the General Directorate of Hydrocarbons, which is responsible for proposing and implementing government policies related to hydrocarbons, biofuels, and agrofuels.⁵² The Decree “seeks to adapt the structure of the General Directorate to the 2019 Hydrocarbons Law and provides for the establishment of a new directorate to handle petroleum and gas risks prevention and management issues, and of regional directorates dedicated to the downstream sector.”⁵³

V. Germany

Germany’s new Building Energy Act (*Gebäudeenergiegesetz* or GEG), which went into effect on January 1, 2024, requires all heating systems installed in new buildings to use at least sixty-five percent renewable energy.⁵⁴ For existing buildings, the GEG allows more time and flexibility to transition to renewable heating by setting phased replacement deadlines based on municipality size.⁵⁵ In larger cities (over 100,000 residents), renewable heating systems must be installed by June 30, 2026, while smaller municipalities have until June 30, 2028.⁵⁶

Handelsblatt reports that Germany’s cabinet is set to discuss a draft “KRITIS umbrella law” aimed at bolstering protections for critical infrastructure against

48. *Id.*

49. *French Government Releases Draft Finance Bill for 2024, Including OECD Pillar Two Rules*, EY GLOBAL (Sept. 29, 2023), https://www.ey.com/en_gl/technical/tax-alerts/french-government-releases-draft-finance-bill-for-2024—including [https://perma.cc/69QC-5PEM].

50. *Id.*

51. *Id.*

52. *New Thresholds for Public Procurement Approved*, MIRANDAALLIANCE: LEGAL NEWS GABON (May 20, 2024), <https://www.mirandalawfirm.com/download/2500/7bb8c65f1fddb711336ca7465c983fb/Gabon%20-%20Legal%20News%20-%20May%202024.pdf> [https://perma.cc/L7K2-FF43].

53. *Id.*

54. *The Building Energy Act: Germany’s Push for Clean Heating*, GRIDX (Jan. 17, 2024), <https://www.gridx.ai/blog/the-building-energy-act-germanys-push-for-clean-heating> [https://perma.cc/YWK7-CNDH].

55. *Id.*

56. *Id.*

physical threats.⁵⁷ This will mark the first time Germany imposes cross-sector resilience requirements on operators of critical infrastructure such as energy, water, transport, healthcare, and IT services essential for public safety.⁵⁸ Operators will be required to account for a broad range of risks, including natural disasters, human error, and sabotage.⁵⁹ The law, which had to be in place by October 2024 to meet EU regulations, mandates that measures be implemented by January 2026.⁶⁰ Energy sector representatives have previously raised concerns over unclear responsibilities for infrastructure protection, particularly in the wake of heightened security concerns following the Nord Stream gas pipeline sabotage in 2022.⁶¹

VI. Portugal

The Portuguese Government passed Decree-Law 4/2024 on January 5, 2024, which establishes “the rules aimed at governing the voluntary carbon market and promoting the involvement of various agents (public or private), in the development of projects for greenhouse gas emissions’ reduction or carbon capture (supply) and/or through the acquisition of carbon credits generated by such projects (demand).”⁶²

The new law provides, “inter alia, the rules applicable to carbon projects, namely (i) applicable methodologies, (ii) types of carbon credits, (iii) monitoring and reporting mechanisms, (iv) registration of projects and of carbon credits, and (v) use and cancellation of carbon credits.”⁶³

VII. New Zealand

In 2024, New Zealand introduced significant legislative measures to expedite the consenting process for renewable energy projects.⁶⁴ First, the Fast-track Approvals Bill, which was introduced on March 7, 2024, aims to create “a permanent regime to ‘fast track’ consents for nationally and regionally significant projects, including energy projects.”⁶⁵ Unlike the standard Resource Management Act, which permits

57. Carolina Kyllmann, *Germany to Step Up Critical Infrastructure Protection with New Law*, CLEAN ENERGY WIRE (Aug. 19, 2024), <https://www.cleanenergywire.org/news/germany-step-critical-infrastructure-protection-new-law> [https://perma.cc/Z3DE-YPZL].

58. *Id.*

59. *Id.*

60. *Id.*

61. See *Nord Stream 2: Twists and turns of a controversial gas pipeline*, CLEAN ENERGY WIRE (Jan. 4, 2023), <https://www.cleanenergywire.org/news/nord-stream-2-twists-and-turns-controversial-gas-pipeline> [https://perma.cc/UZ65-BA6Q].

62. *Voluntary Carbon Market*, MIRANDA (Jan. 12, 2024), <https://www.mirandalawfirm.com/index.php/en/insights-knowledge/publications/alerts/voluntary-carbon-market-2#> [https://perma.cc/MSL3-E527].

63. *Id.*

64. Michael Loan et al., *Renewable Energy 2024*, CHAMBERS & PARTNERS (Sep. 26, 2024), <https://practiceguides.chambers.com/practice-guides/renewable-energy-2024/new-zealand> [https://perma.cc/WVA2-EPVK].

65. *Id.*

de novo appeals in the Environment Court, the new regime shortens consenting timeframes and limits appeal rights to points of law only.⁶⁶

Second, the Resource Management Amendment Bill, which was scheduled for introduction later in 2024, will “further support the consenting of renewable energy projects.”⁶⁷ The bill is “expected to reduce consent processing timeframes for most renewable energy projects to within a year, extend lapse dates for renewable energy, transmission, and distribution projects from five to ten years, and increase default consent durations to thirty-five years for renewable energy consents.”⁶⁸

Finally, New Zealand is developing a comprehensive Energy Strategy set to be published at the end of 2024 aimed at ensuring a modern, affordable, and secure energy system to support a stronger economy.⁶⁹ The key points of the strategy include:

1. **Positive Outlook:** The current energy system has been effective, but significant challenges and changes are on the horizon as electricity demand is projected to rise dramatically by 2050.⁷⁰ Meeting this demand will necessitate investing tens of billions of dollars into energy generation and infrastructure.⁷¹
2. **Shift to Renewables:** The strategy anticipates that most new renewable electricity generation will come from wind and solar sources, which are intermittent by nature.⁷² This shift necessitates the development of additional energy sources that can operate when renewable sources are unavailable and energy storage solutions for low water levels in lakes.⁷³
3. **Role of Fossil Fuels:** While the proportion of fossil fuels in electricity generation is expected to decline, they will still play a critical role in maintaining energy security during the transition period.⁷⁴
4. **Government Approach:** The government aims to “remove barriers, provide certainty, and ensure that incentives are aligned” across the energy system to facilitate decarbonization while maintaining security and affordability.⁷⁵

66. *Id.*

67. *Id.*

68. *Id.*

69. *New Zealand Energy Strategy*, MINISTRY OF BUS., INNOVATION & EMP. (Sep. 6, 2024), <https://www.mbie.govt.nz/building-and-energy/energy-and-natural-resources/energy-strategies-for-new-zealand/new-zealand-energy-strategy> [https://perma.cc/BX29-TCYQ].

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. MINISTRY OF BUS., INNOVATION & EMP., *supra* note 69.

VIII. Romania

In 2024, Romania took a significant step towards enhancing its energy independence by adopting its first Offshore Wind Energy Law, which came into effect on May 30.⁷⁶ This law aims to promote the development of offshore wind resources in the Black Sea with the goal of establishing the country's first offshore wind farm by 2032.⁷⁷ To facilitate investment, the Romanian Ministry of Energy will commission an expert study within three months of the law's enactment to study the concession process and operational activities for offshore wind turbines.⁷⁸ The government plans to define the framework conditions for offshore wind energy use by March 31, 2025, and approve necessary implementing laws by June 30, 2025.⁷⁹

Romania also enacted Law No. 228/2024, which significantly alters "the fiscal framework for offshore oil and gas operations."⁸⁰ This law introduces increased tax rates on windfall revenues from offshore gas sales, with rates reaching up to seventy percent based on the market price of natural gas.⁸¹ This change aims to ensure the state receives a greater share of revenue during periods of high prices.⁸² Additionally, the law eliminates "the previous requirement for investors to sell fifty percent of their gas production on the Romanian market," granting them more freedom to trade hydrocarbons based on their commercial strategies.⁸³ But it "retains a provision allowing the Romanian government to prioritize domestic gas supply" during energy crises.⁸⁴ Law No. 228/2024 also guarantees "stability in the royalty and tax regimes throughout the duration of petroleum agreements, providing predictability for investors."⁸⁵ This stability is expected to encourage further investment in Romania's offshore projects," particularly in "the development of significant reserves in the Black Sea, such as the Neptun Deep project."⁸⁶

The Romanian Parliament passed a law that allows electricity suppliers to enable "prosumers and active consumers to sell their electricity at the hourly Day-Ahead

76. *Romania Adopts Offshore Wind Law*, WINDEUROPE (May 2, 2024), <https://windeurope.org/newsroom/news/romania-adopts-offshore-wind-law/> [https://perma.cc/5WZU-8JZN].

77. *Id.*

78. *Id.*

79. Adrijana Buljan, *Romania Adopts Offshore Wind Bill, Plans to Have First Project Up and Running by 2032*, OFFSHORE WIND (Apr. 11, 2024) <https://www.offshorewind.biz/2024/04/11/romania-adopts-offshore-wind-bill-plans-to-have-first-project-up-and-running-by-2032/> [https://perma.cc/9JVV-JXZZ].

80. See generally Eusebiu Stamate, *Issue Monitoring, Romania's Energy Sector Overview* (2024), <https://issuemonitoring.eu/wp-content/uploads/2024/08/Romanias-Energy-Sector-Overview-narativ.pdf>.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. Buljan, *supra* note 79.

86. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

ENERGY & ENVIRONMENTAL LAW 73

Market (DAM) price.”⁸⁷ This move aims to facilitate the integration of renewable energy into the market, allowing participants “to benefit from price fluctuations without complex processes.”⁸⁸ The law is pending the President’s signature.⁸⁹

The Romanian Senate introduced a climate change mitigation and adaptation proposal aiming for climate neutrality by 2050.⁹⁰ Supported by the PSD-PNL Coalition and UDMR, the proposal outlines sector-specific emission targets and establishes a Scientific Advisory Council for Climate to inform policy decisions.⁹¹ This initiative aligns with EU directives and emphasizes green job creation.⁹²

The Chamber of Deputies adopted an ordinance that includes two controversial provisions.⁹³ First, prosumers with renewable energy systems up to 400 kW must install energy storage batteries.⁹⁴ Non-compliance can lead to reduced energy injection capacity into the grid, which has raised concerns about its financial impact on renewable investments.⁹⁵ Second, companies must sell natural gas at capped prices for households and thermal plants in Q1 2025.⁹⁶ While aimed at consumer protection, critics worry this measure may jeopardize financial sustainability in the sector.⁹⁷

87. Eusebiu Stamate, *PA FOCUS on Romania’s Energy Sector: Legislation Reforms and Regulation Updates in June 2024*, ISSUE MONITORING (July 3, 2024), <https://issuemonitoring.eu/en/pa-focus-on-romania-energy-sector-legislative-reforms-and-regulatory-updates-in-june-2024/> [https://perma.cc/4L3L-BWXP].

88. *Id.*

89. *Id.*

90. Farah Imrana Hussain & Abhishek Joseph, *Romania leverages climate finance to achieve national priorities*, WORLD BANK GRP. (Oct. 29, 2024), <https://blogs.worldbank.org/en/climatechange/romania-leverages-climate-financing-to-achieve-national-prioriti> [perma.cc/SU9F-VQYS].

91. Stamate, *supra* note 87.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. Stamate, *supra* note 87.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

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International M&A and Joint Ventures

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This article summarizes important developments during 2024 in international mergers and acquisitions (M&A) and joint ventures in Spain, Russia, India, Japan, China, Brazil and the United States.

I. Spain

A. INTRODUCTION

Despite the good forecasts for M&A activity in 2024 at the close of 2023, socio-economic uncertainty has impacted dealmaking activity. Spanish M&A activity has so far registered a slight, approximately 0.04%, decrease in the number of transactions in 2024, but there has been an approximately twenty-seven percent increase in the aggregate amount of such transactions when compared to the same period in 2023.¹ Real estate remains the most active sector of 2024.² But other sectors like renewable energy, technology, healthcare, and digitalization have continued to be attractive for investors.³ This is mainly due to the boost provided by the Spanish Government's public policies on energy transition and

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1. See *El Capital Movilizado en el Mercado M&A en España un 27% en el Tercer Trimestre de 2024*, TTR DATA (Oct. 14, 2024), <https://blog.ttrdata.com/informe-trimestral-sobre-el-mercado-transaccional-espanol-3t-2024/> [<https://perma.cc/C9NP-SZ76>].

2. *Id.*

3. *Id.*

digitalization, which are primarily supported by the European Next Generation EU funds,⁴ and driven by technological disruption that has pushed technology companies to make significant investments in AI.⁵

Even though legislative development has been much lower compared to last year, several developments have had a major impact on M&A and joint ventures.⁶

B. ESG REGULATIONS

Over recent years, companies have been increasingly considering the incorporation of Environmental, Social, and Governance (ESG) criteria into their M&A strategy and transactions.⁷ To adapt European regulations⁸ to national legislation, on October 29, 2024, the Spanish Government approved a draft of The Corporate Sustainability Reporting Act (LIES) for submission to and subsequent approval by the Spanish Congress.⁹ It calls for amending the Spanish Commercial Code, the Companies Act, and the Auditing Act.¹⁰

LIES requires companies, subsidiaries, and branches of companies with a high volume of business, as well as medium and small listed companies, to prepare sustainability reports.¹¹ Those reports must reflect not only the companies' internal practices, but also how those practices affect society and the environment throughout their value chain, and long-term sustainability objectives.¹² In addition, the report must be audited by an independent expert, which guarantees the accuracy of the information and enhances investor confidence.¹³

LIES is undoubtedly a major step forward in the field of ESG and represents a great opportunity for companies to improve their competitiveness and reputation.

4. *Id.*

5. *Spain – Country Commercial Guide*, INT'L TRADE ADMIN. (Sept. 20, 2024), <https://www.trade.gov/country-commercial-guides/spain-digital-economy> [<https://perma.cc/N9Q3-VEU5>].

6. See TTR DATA, *supra* note 1.

7. See *European M&A & ESG: There is More to Come*, NORTON ROSE FULBRIGHT (Jan. 2024), <https://www.nortonrosefulbright.com/en/knowledge/publications/3c1db17e/european-manda-and-esg-there-is-more-to-come> [<https://perma.cc/P3FR-6LB9>].

8. Directive 2022/2464, of the European Parliament & of the Council of 14 December 2022 on Corporate Sustainability Reporting, 2022 O.J. (L 322/15).

9. Maria Caño et al., *Spain: The Draft of the Corporate Sustainability Reporting Law Arrives to the Parliament*, J&A GARRIGUES, S.L.P. (Nov. 15, 2024), https://www.garrigues.com/en_GB/new/spain-draft-corporate-sustainability-reporting-law-arrives-parliament#main-content [<https://perma.cc/7VJ4-XYT3>].

10. *Id.*

11. See *El Gobierno aprueba el proyecto de Ley de Información Empresarial sobre Sostenibilidad para la divulgación de la contribución de las empresas en cuestiones medioambientales, sociales y de gobernanza* [The Government approves the draft Business Information Law on Sustainability for the disclosure of the contribution of companies to environmental, social and governance issues], MINISTERIO DE ECONOMIA, COMERCIO Y EMPRESA [MINISTRY OF ECON., TRADE & BUS.] (Oct. 28, 2024), <https://portal.mineco.gob.es/en-us/comunicacion/Pages/transposicion-directiva-europea-pacto-verde.aspx> [<https://perma.cc/W7RK-D4FL>].

12. *Id.*

13. *Id.*

C. FDI REGULATIONS

Order ECM/57/2024, promulgated January 29, 2024, developed the procedures and models for the foreign investment declarations (FID) established in RD 571/2023.¹⁴

The order regulates the procedures for prior declaration of investment, which are required for non-cooperative jurisdictions,¹⁵ as well as investment and divestment. The following are the most important new features of the order: (1) the presentation of any type of declaration foreseen in the order must be made through electronic means, even if the investor is a natural person;¹⁶ (2) any change of registered office or transfer of residence that implies a change in the resident or non-resident status of the investor must be declared within one month from the formalization of the change or transfer¹⁷ (previously, the standard was six months);¹⁸ (3) annual reports on the development of FDI shall be filed within seven months of the end of the tax year of the company or branch subject to the FDI¹⁹ (previously, the standard was nine months);²⁰ and (4) Any financing transaction to companies or branches granted by group companies through any debt instrument for an amount greater than €1,000,000 with a repayment period of more than one year must be reported.²¹

D. CORPORATE REGULATIONS

RDL 20/2022, promulgated December 27, 2022, approved a moratorium until the close of the 2024 tax year for the computation of 2020 losses for the purposes of article 363.1e of the Spanish Companies Act.²² That Act establishes that companies must be dissolved when losses reduce their equity to an amount less than half of the share capital unless the latter is increased or reduced to a sufficient extent, and provided that it is not appropriate to request a declaration of insolvency.²³

14. Royal Decree on Foreign Investment (R.C.L. 571/2023) (Spain); Order ECM/57/2024, of Jan. 29, Establishing the Procedures Applicable to Declarations of Foreign Investments (B.O.E. n. 27, 2024) (Spain).

15. Order on Non-Cooperative Jurisdictions (B.O.E. n. 35, 2023) (Spain); Order ECM/57/2024, (B.O.E. n. 27, 2024) (Spain), at art. 1.

16. Royal Decree 571/2023, at Preamble IV; Order ECM/57/2024, (B.O.E. n. 27, 2024) (Spain), at Preamble.

17. Order ECM/57/2024, (B.O.E. n. 27, 2024) (Spain), at art. 5.

18. Julio González Valverde, *Simplification of The Procedure for Filing Declarations of Foreign Investments*, VILÁ ABOGADOS (Apr. 26, 2024), <https://vila.es/en/immigration/simplification-of-the-procedure-for-filing-declarations-of-foreign-investments/> [https://perma.cc/LT4P-ER24].

19. Royal Decree 571/2023, at art. 5.4; Order ECM/57/2024, (B.O.E. n. 27, 2024) (Spain), at art. 16.

20. See Valverde, *supra* note 18.

21. Royal Decree 571/2023, at art. 4(e).

22. Royal Decree-Law 20/2022 (B.O.E. n. 161, 2022) (Spain).

23. Mariscal Abogados, *The Dissolution of a Company in Spain due to Losses*, MARISCAL ABOGADOS S.L.P. (2025), <https://www.mariscal-abogados.com/the-dissolution-of-a-company-in-spain-due-to-losses/> [https://perma.cc/CVF2-N7HF].

This will undoubtedly have a great impact on many investors as they will be forced to dissolve and liquidate companies while losing part or all their investment.²⁴

E. CASE LAW

There has been no notable case law on M&A this year, mainly because the New Law on Structural Changes in Corporations was approved in 2023 and conflicts in its application have not yet been resolved by the courts.²⁵ But significant court rulings are expected next year when judges begin to make their first pronouncements and interpretations of this law.

II. Japan

A. GUIDELINES FOR CORPORATE TAKEOVERS

In Japan, traditional practices such as cross-shareholdings and the prevalence of loyal shareholders, combined with a shortage of qualified independent directors on boards of listed companies, have historically limited stock market discipline and hindered effective engagement with minority shareholders.²⁶ Furthermore, cross-shareholdings have faced criticism for contributing to lower capital efficiency.²⁷ Japan also has a notably higher number of listed companies with a Price Book-Value Ratio of less than 1x compared to other countries.²⁸ As a result, M&A transactions are anticipated to play a more prominent role in addressing increasingly complex management challenges.²⁹

In response to these trends, the Ministry of Economy, Trade and Industry developed the Guidelines for Corporate Takeovers (Guidelines) on August 31, 2023.³⁰ The primary objective of these guidelines is to encourage acquisitions that enhance corporate value and protect shareholder interests, with specific attention to how stakeholders should conduct themselves when the perspectives of the acquirer and target company diverge on the merits of an acquisition proposal.³¹ In light of the Guidelines, cases of unsolicited acquisition proposals and competing proposals, by not only activist funds but also business companies, are on the rise.

24. See *id.*

25. Royal Decree-Law 5/2023, New Law on Structural Changes in Corporations (B.O.E. n. 154, 2023) (Spain).

26. Jocelyn Brown, *How Investors are Tracking Progress on Japan's Efforts to Unwind Cross-Shareholdings*, T. ROWE PRICE, <https://www.troweprice.com/institutional/us/en/insights/articles/2025/q1/tracking-progress-on-japan-efforts-to-unwind-cross-shareholdings-na.html> [https://perma.cc/QAS8-FULL] (last visited May 15, 2025).

27. *Id.*

28. *Id.*

29. See *id.*

30. Ministry of Economy, Trade & Industry, *Guidelines for Corporate Takeovers – Enhancing Corporate Value and Securing Shareholders' Interests*, METI 1, 3 (Aug. 31, 2023) (Japan).

31. *Id.* at 5.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

M&A and JOINT VENTURES 79

This trend includes the following notable proposals announced in 2024: (1) acquisition proposal for Roland DG Corporation by Brother Industries, Ltd.;³² (2) acquisition proposal for Fuji Soft Incorporated by Bain Capital;³³ and (3) acquisition proposal for Seven & i Holdings Co., Ltd. by Canada's Alimentation Couche-Tard Inc.³⁴

B. FINANCIAL SERVICES AGENCY'S ACTION PROGRAM 2024

In recent years, corporate governance reforms have been promoted through the formulation and periodic review, which takes place every three years, of Japan's Stewardship Code³⁵ and Corporate Governance Code.³⁶

These initiatives have facilitated the appointment of independent outside directors in many listed companies.³⁷ But from the perspective of advancing substantive corporate governance reform, the Financial Services Agency has started to consider methods beyond code revisions alone.³⁸ The Action Program 2024 aims to promote initiatives to enhance corporate governance reform based on a self-driven awareness shift by companies and investors, returning to the goals of sustainable corporate growth and long-term value enhancement, and examining and sharing concrete initiatives.³⁹

C. AMENDMENT TO THE FINANCIAL INSTRUMENTS AND EXCHANGE ACT

Along with the progress of corporate governance reforms, activist shareholders are increasingly seeking to influence strategic shifts or management changes as

32. See *Announcement on Scheduled Commencement of Tender Offer for Shares of Roland DG Corporation*, BROTHER INDUS., LTD. (Mar. 13, 2024), <https://download.brother.com/pub/-com/en/news/2024/20240313e-002.pdf> [<https://perma.cc/Q7A4-T5HQ>].

33. See *KKR Extends Second Tender Offer for FUJI SOFT*, KKR (Dec. 19, 2024), https://media.kkr.com/news-details?news_id=743de712-7d81-4f25-b950-c63b136d897b [<https://perma.cc/DK8Q-M2GF>].

34. Olivier Mourgeot, *Quebec-Based Couche-Tard Stakes Big in Bid to Acquire 7-Eleven Convenience Stores*, LEMONDE (Aug. 20, 2024), https://www.lemonde.fr/en/economy/article/2024/08/20/-quebec-based-couche-tard-stakes-big-in-bid-to-acquire-7-eleven-convenience-stores_6718839_19.html [<https://perma.cc/8RG2-CJKT>].

35. *Principles for Responsible Institutional Investors – Japan's Stewardship Code*, Council of Experts on the Stewardship Code, 1, 9 (Mar. 24, 2020) (Japan).

36. See generally Tokyo Stock Exchange, Inc., *Japan's Corporate Governance Code 1* (Jun. 11, 2021).

37. *Key Points Concerning the Revision to Japan's Corporate Governance Code*, WINSTON & STRAWN LLP (Dec. 10, 2021), <https://www.winston.com/en/insights-news/key-points-concerning-the-revision-to-japans-corporate-governance-code> [<https://perma.cc/EJ6N-AHA4>].

38. See *Action Program for Corporate Governance Reform 2024: Principles into Practice*, The Council of Experts Concerning the Follow-up of Japan's Stewardship Code and Japan's Corporate Governance Code, 1 (Jun. 7, 2024) (Japan).

39. See *id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

80 THE YEAR IN REVIEW

[VOL. 59]

major shareholders in listed companies.⁴⁰ Moreover, cases of unsolicited acquisitions are on the rise.⁴¹ Against this backdrop of changing circumstances around corporate acquisitions, the following two major revisions were passed on May 15, 2024, marking the first substantial amendments to these laws since their last revision in 2006.⁴²

First, in revising the rules for mandatory tender offers, the ownership threshold triggering a mandatory offer was lowered from one-third to thirty percent.⁴³ Additionally, on-market transactions now fall within the scope of this thirty percent rule.⁴⁴ With the enactment of this revised law, instances requiring a tender offer for the acquisition of shares in listed companies are expected to become more frequent.⁴⁵

Second, large shareholding reporting requires substantial shareholders of listed companies to publicly disclose their holding status through reports.⁴⁶ Revisions to this system include the introduction of special provisions aimed at reducing the chilling effect on collaborative engagement by institutional investors.⁴⁷ Under this revised law, even when shareholders agree to exercise their voting rights or other shareholder rights jointly, they are not classified as “joint holders” if all the following conditions are met: (i) both shareholders are financial instruments business operators, (ii) the purpose of the agreement is not to make “material proposals”⁴⁸ jointly, and (iii) the agreement to exercise voting rights or other shareholder rights jointly qualifies as an agreement for each individual exercise of rights, as specified by a government ordinance, which is set to be amended.⁴⁹ This revision is expected to clarify the criteria, more so than before, regarding the extent of coordinated actions investors can engage in with other investors concerning a target company before being classified as joint holders, which would necessitate the aggregation of their holdings and application of the large shareholding reporting system.⁵⁰ In addition, from the perspective of enhancing the system’s effectiveness, a focus on strengthening responses to violations has been emphasized, with recent

40. Nels Hansen & Jun Usami, *Land of The Rising Dissension: Japanese Shareholder Activism in Focus*, WHITE & CASE (Sept. 18, 2024), <https://mergers.whitecase.com/highlights/land-of-the-rising-dissension-japanese-shareholder-activism-in-focus> [https://perma.cc/K56J-MN6B].

41. *Id.*

42. Yu Tamura, *Amendments to the Tender Offer Regulations*, CHAMBERS & PARTNERS (Dec. 26, 2024), <https://chambers.com/articles/amendments-to-the-tender-offer-regulations> [https://perma.cc/JEU9-3A4Y].

43. *Id.*

44. *Id.*

45. *Id.*

46. Financial Instruments & Exchange Act, Act No. 25, arts. 23–27, <https://www.fsa.go.jp/common/law/fie01.pdf> [https://perma.cc/2RTQ-8MR7] (Japan).

47. *See id.* arts. 27–26.

48. *Id.*

49. *Id.*

50. *See id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

M&A and JOINT VENTURES 81

examples of fines imposed solely for violations of large shareholding reporting requirements.⁵¹

The revised law is set to come into effect within two years after May 22, 2024, after the necessary adjustments to the government ordinance.⁵² These amendments are expected to have a substantial impact on the practices of capital market participants in Japan.⁵³ Additionally, because many details of the revised law will be clarified through future amendments to the government ordinances, it is crucial to continue closely monitoring upcoming developments.⁵⁴

D. AMENDMENT TO FDI REGULATIONS

To address concerns over supply chain security and the risks of technology leakage and military diversion, semiconductor manufacturing equipment, advanced electronic components, machine tool components, and marine engines were added to the list of designated sectors in August 2024.⁵⁵ This has broadened the scope of companies requiring prior notification for inward direct investment.⁵⁶

For transparency improvement, the Ministry of Finance published its first-ever annual report in 2023, including information on the number of withdrawn prior notifications for inward direct investments.⁵⁷ According to the annual report, in FY2023 there were 2,871 prior notifications for foreign direct investments, of which 399, or 13.9 percent, were not cleared within the waiting period and were subsequently withdrawn.⁵⁸

E. OUTBOUND TRANSACTIONS

With Japanese companies' retained earnings reaching record highs, there is a potential increase in outbound M&A transactions.⁵⁹ An example is the acquisition of U.S. Steel by Nippon Steel, which is ongoing as of November 2024.⁶⁰

51. See *Recommendation for an Order to Pay Administrative Monetary Penalties for Failure to Submit a Large Shareholding Report and False Statements in an Amendment Report Regarding Mitsubishi Co., Ltd.*, SEC. & EXCH. SURVEILLANCE (Jun. 28, 2020), https://www.fsa.go.jp/sesc/news/c_2024/2024/20240628-1.html [<https://perma.cc/ESW3-28RM>] (Japan).

52. Tamura, *supra* note 42.

53. See *id.*

54. See *id.*

55. *Public Notice Specifying Business Types to Be Specified by the Minister of Finance and the Competent Minister for the Business Pursuant to the Provisions of Article 3-2, Paragraph (3) of the Order on Inward Direct Investment*, MINISTRY OF JUST., JAPAN (2025), <https://www.japaneselawtranslation.go.jp/en/notices/view/147> [<https://perma.cc/38UW-SJDP>].

56. See *id.*

57. Ministry of Fin., *Foreign Exchange & Foreign Trade Act, Foreign Investment Screening System, Annual Report (FY2023)*, 21 (2023).

58. *Id.*

59. See *Nippon Steel Corporation (NSC) to Acquire U.S. Steel, Moving Forward Together as the 'Best Steelmaker with World-Leading Capabilities,' USS* (Dec. 18, 2023), <https://www.ussteel.com/newsroom/-/blogs/nippon-steel-corporation-ns-c-to-acquire-u-s-steel-moving-forward-together-as-the-best-steelmaker-with-world-leading-capabilities-> [<https://perma.cc/XSG3-R6BF>].

60. See *id.*

III. Russia

It was once said that “Diligence is the mother of good fortune.”⁶¹ The same is true when buying a business in Russia. It has always been a matter of heated debate whether an effectiveness of Representations on Circumstances⁶² (Representations) provided under Russian law to a purchaser somehow depend upon the degree of diligence and prudence which the purchaser himself applies in M&A transactions.⁶³

When assessing the effectiveness of Representations, Russian courts have in general recently tended to favor an approach that treats inducement as an essential element of Representations.⁶⁴ Therefore a party, receiving Representations, shall not be obliged to examine the validity of received Representations (“as such a requirement would have disavowed and diminished the very essence of the concept of representations under Russian law”).⁶⁵ But the recent case law shows that the approach may differ in situations where the purchaser is already a shareholder, especially an equal or majority shareholder, of the target company.⁶⁶ That was the issue discussed in the recent case *Wine House Fotisal*, which was resolved by the Supreme Court of the Russian Federation (Russian Supreme Court).⁶⁷ The case is now deemed one of the most spectacular cases in 2024.⁶⁸

61. *Diligence is the Mother of Good Luck*, FREE DICTIONARY BY FARLEX, INC. (2025), <https://idioms.thefreedictionary.com/diligence+is+the+mother+of+good+luck> [<https://perma.cc/PLQ9-DTW6>].

62. See *Grazhdanskiĭ Kodeks Rossiĭskoĭ Federatsii* [GK RF] [Civil Code] art. 431.2, https://www.wto.org/english/thewto_e/acc_e/rus_e/wtaccrus58_leg_360.pdf [<https://perma.cc/Z66K-DZJU>] (Russ.).

63. See *id.*; Debevoise & Plimpton, *Top 10 Legal Developments in Russia МЭА in 2018*, 15 (Jan. 31, 2019), <https://www.debevoise.com/insights/publications/2019/01/top-10-legal-developments-in-russian> [<https://perma.cc/38NT-G53K>].

64. Debevoise, *supra* note 62, at 15.

65. See *ДЕСЯТЫЙ АРБИТРАЖНЫЙ АПЕЛЛЯЦИОННЫЙ СУД*, A41-32499/23 [Tenth Arbitration Court of Appeal Resolution No. 10AP-14989/2023], *VESTNIK VYSSHEGO ARBITRAZHNOGO SUDA ROSSIĖSKOĖ FEDERATSII* [VESTNIK VAS RF] [Bulletin of the Highest Arbitration Court of the Russian Federation] 2023, No. A41-32499/23, p.6 (Russ.); *But cf.* *ДЕВЯТЫЙ АРБИТРАЖНЫЙ АПЕЛЛЯЦИОННЫЙ СУД* 127994, Москва, ГСП-4, проезд Соломенной сторожки, 12, A40-142408/22 [Ninth Arbitration Court Of Appeal 127994, Moscow, GSP-4, Solomennoy Storozhki proezd, 12] *VESTNIK VYSSHEGO ARBITRAZHNOGO SUDA ROSSIĖSKOĖ FEDERATSII* [VESTNIK VAS RF] [Bulletin of the Highest Arbitration Court of the Russian Federation] 2022, No. A40-142408/22, p. 11 (Russ.).

66. See *ВЕРХОВНЫЙ СУД РОССИЙСКОЙ ФЕДЕРАЦИИ О П Р Е Д Е Л Е Н И Е № 305-ЭС24-4207* [Supreme Court of the Russian Federation Definition No.305-ES24-4207], *взыскании с общества с ограниченной ответственностью «Агропромышленная группа «Ладога- Инвест» в пользу общества с ограниченной ответственностью «Главкрымвино»* [on the recovery from the limited liability company “Agro-Industrial Group Ladoga Invest” in favor of the limited liability company “Glavkrymvinno”] 2022, No. 305-ES24-4207, 10-13 (Russ.) [hereinafter *Wine House Fotisal* case].

67. See *id.*

68. See Rostislav Kats et al., *Russian Courts Claim Exclusive Jurisdiction Over Disputes Between Russian-Domiciled Companies: Another Blow to International Arbitration*, KLUWER ARB. BLOG (Jan. 29, 2025), <https://arbitrationblog.kluwerarbitration.com/2025/00/29/russian-courts-claim-exclusive-juris>

The *Wine House Fotisal* case revolved around the effectiveness of the representations provided in the call option by the seller, which held fifty percent of shares in the target, to the purchaser, who at that moment held the other fifty percent in share capital.⁶⁹ The representation in question related to the accounts, or financial statements, of the target; in particular, the accounts payable which, as it later turned out, did not reflect the substantial indebtedness of the target to one of its contractors.⁷⁰

The Russian Supreme Court held that there shall be a difference between: (i) situations where the shares are being sold in favor of an external third party, who had no opportunity to obtain information regarding the business of the target company and its financial situation without direct assistance from the seller, including without conducting due diligence procedure; and (ii) situations where one equal shareholder acquires the shares from other(s) in an internal transfer of shares.⁷¹ In the latter situation, as the Russian Supreme Court ruled, a presumption exists that the equal shareholders possess—or, at least, may obtain upon request—all necessary information regarding the business of the target company and its financial situation.⁷²

The Russian Supreme Court also noted that the warranted accounts, or financial statements, of the target had been annually approved by both shareholders of the target, including the purchaser, and that there was no evidence provided that the purchaser, who had the same rights as the other shareholder, in fact had failed show any interest in the operation of the target company by only formally participating in the general meetings of the shareholders and voting for the approval of the accounts, or financial statements.⁷³ Accordingly, the Russian Supreme Court found that the mentioned presumption of the shareholders' awareness of its company's affairs was not rebutted by the representatives of the purchaser, and that the purchaser therefore shall be imputed with the knowledge of unreliability of the representations at the time received.⁷⁴

It follows from the *Wine House Fotisal* case and falls squarely within Russia's generally accepted anti-sandbagging approach, that the purchaser, who already holds a majority or significant portion of shares in the target company, may be estopped from claiming a breach of business representations received with respect

diction-over-disputes-between-russian-domiciled-companies-another-blow-to-international-arbitration/
[<https://perma.cc/7TEG-QNQZ>].

69. *Wine House Fotisal* case, *supra* note 65.

70. *See id.* at 7, 10–13.

71. *See id.* at 11.

72. *See id.*

73. *See id.* at 11–12.

74. *See id.* at 10.

to that target company.⁷⁵ Thus, additional diligence is expected.⁷⁶ Nonetheless, the approach of the Russian Supreme Court described above would unlikely be applicable to cases where a purchaser does not have effective control over the target company, and, in any event, the court practice in this area is only beginning to be established.⁷⁷

IV. India

A. 2024: A DEFINING YEAR IN INDIA'S MEDIA AND ENTERTAINMENT SECTOR

In 2024, India's media and entertainment sector saw a series of landmark mergers and acquisitions set to reshape the landscape for years to come with the \$8.5 billion Reliance-Disney merger,⁷⁸ the anticipated yet terminated Sony-ZEE merger,⁷⁹ and Poonawalla's acquisition of a fifty percent stake in Dharma Productions.⁸⁰ Each of these moves highlights the intense competition, opportunities, and challenges in one of the world's fastest-growing media markets.

B. THE RELIANCE-DISNEY \$8.5 BILLION JOINT VENTURE: REDEFINING MEDIA POWER IN INDIA

The Reliance-Disney joint venture marks a significant milestone in Indian media, which is valued at \$8.5 billion.⁸¹ This merger creates a powerful entity that commands eighty-five percent of the streaming market and nearly half of the television audience and unites Disney Star and Viacom18, two influential media

75. See рассмотрев в открытом судебном заседании апелляционную жалобу общества с ограниченной ответственностью «Сюкден Брэнднеймс Маркетинг» на решение Арбитражного суда Ставропольского края, No. A63-1976/2017 [Appeal of Syukdenden Brandsname Marketing against the Decision of the Arbitration Court of the StavropolKrai], VESTNIK VYSSHEGO ARBITRAZHNOGO SUDA ROSSIĬSKOĬ FEDERATSII [VESTNIK VAS RF] [Bulletin of the Highest Arbitration Court of the Russian Federation] 2017, No. A63-1976/2017, p. 6 (Russ.).

76. See *id.*

77. See *id.* at 14–15.

78. See Javed Farooqui, *Reliance, Disney Announce Deal to Create \$8.5 Billion Media Goliath* [Media], ECON. TIMES (Feb. 29, 2024), <https://www.proquest.com/docview/2932507047> [<https://perma.cc/9HKB-L4FZ>].

79. See Arpan Chaturvedi & Aditya Kalra, *Exclusive: Sony Scrapped \$10bln India Merger as Zee Failed to Meet Financial Terms – Notice*, REUTERS (Jan. 29, 2024, 5:29 PM), <https://www.reuters.com/business/media-telecom/sony-scrapped-10-blm-india-merger-zee-failed-meet-financial-terms-notice-2024-01-29/> [<https://perma.cc/7P5L-U3YL>].

80. See Rishika Sadam & Hritam Mukherjee, *Bollywood Filmmaker Karan Johar's Studio Sells 50% State Worth 10 bln Rupees to Vaccine Maker's CEO*, REUTERS (Oct. 21, 2024, 2:35 AM), <https://www.reuters.com/markets/deals/adar-poonawalla-buy-50-stake-karan-johars-dharma-productions-10-blm-rupees-2024-10-21/> [<https://perma.cc/9L68-X8WG>].

81. Farooqui, *supra* note 78.

powerhouses.⁸² Reliance's investment of \$1.4 billion for a majority stake ensures its dominance in the new organization.⁸³ Reliance owns 63.16%–16.34% directly and 46.82% through Viacom18—while Disney holds 36.84%.⁸⁴ With Nita Ambani as chair and Uday Shankar as vice chair, the venture is poised to harness Reliance's market strength alongside Disney's global brand recognition.⁸⁵ This merger combines the vast reach of Disney Star with Viacom18, resulting in over 100 TV channels and approximately 30,000 hours of original content produced each year.⁸⁶ The new entity will also benefit from access to Disney's extensive global content library, giving it a competitive advantage over other local platforms.⁸⁷ The Reliance-Disney partnership secures valuable sports broadcasting rights, including the Indian Premier League, ICC tournaments, and FIFA events, appealing to advertisers and sports fans.⁸⁸

With an eighty-five percent share in streaming and a strong presence in television, the merged entity wields significant power over content distribution, subscription pricing, and advertising revenues.⁸⁹

C. SONY-ZEE MERGER COLLAPSE: A MAJOR DISAPPOINTMENT AND NEW COMPETITION

The dissolution of the Sony-ZEE merger represents a significant disappointment and introduces new competition.⁹⁰ Initially announced in 2021, this merger was anticipated with great optimism; but it ultimately fell apart in January 2024 after prolonged negotiations.⁹¹ The primary reasons for the merger's failure included regulatory challenges, disputes among leadership, and Sony's insistence on a complete separation from Punit Goenka, the CEO of ZEE, who had been under regulatory scrutiny.⁹² Although ZEE was amenable to Goenka resigning after the

82. See Shomik Sen Bhattacharjee, *Disney in Talks with Mukesh Ambani's Reliance for Mega Indian Media Merger*, BENZINGA (Dec. 12, 2023), <https://www.proquest.com/docview/2900499404> [https://perma.cc/C963-H3ES].

83. See *id.*

84. See Shailja Tiwari, *Reliance and Disney Finalise Viacom18 and Star India Merger, Launching India's Largest Media Venture*, BRAND WAGON (Nov. 14, 2024, 6:01 PM), <https://www.financial-express.com/business/brandwagon-reliance-and-disney-finalise-viacom18-and-star-india-merger-launching-indias-largest-media-venture-3665502/> [https://perma.cc/HUD8-SGHM].

85. See Alex Travelli & Sameer Yasir, *Disney to Step Back from India in Mega-Deal with Reliance Industries*, N.Y. TIMES (Feb. 28, 2024), <https://www.nytimes.com/2024/02/08/business/disney-reliance-industries.html> [https://perma.cc/9VEM-35CY].

86. Tiwari, *supra* note 84.

87. Travelli, *supra* note 85.

88. Tiwari, *supra* note 84.

89. See *id.*

90. Chaturvedi, *supra* note 79.

91. See *id.*

92. See Rupin Chopra, *Zee-Sony Merger-A Journey Through Challenges and Triumphs*, MONDAQ BUS. BRIEFING (Aug. 25, 2023), <https://www.mondaq.com/india/shareholders/1359368/zee-sony-merger-a-journey-through-challenges-and-triumphs> [https://perma.cc/YUE6-C9A7].

merger, this stipulation proved unacceptable to Sony.⁹³ Both companies submitted claims for \$90 million in termination fees, which led to arbitration through the Singapore International Arbitration Centre and India's National Company Law Tribunal.⁹⁴ By August 2024, a non-cash settlement resolved the dispute, allowing both parties to withdraw their claims.⁹⁵

But this breakup is expected to intensify competition between Sony and ZEE as they seek independent growth.⁹⁶ Following the collapse of the merger, ZEE has concentrated on financial stability and development, yet it faces significant challenges in a crowded media landscape.⁹⁷ Sony continues to pursue organic expansion and new partnerships, demonstrating a solid commitment to the Indian market.⁹⁸ The failed merger has created a sense of urgency for both companies to fortify their market positions in an increasingly competitive industry because they must adapt to evolving circumstances.⁹⁹

D. ADAR POONAWALLA'S 50% STAKE IN DHARMA PRODUCTIONS

Adar Poonawalla's recent acquisition of a fifty percent stake in Karan Johar's Dharma Productions signifies a bold venture into Bollywood.¹⁰⁰ This significant INR 1,000 crore, or USD 119 million, investment merges Poonawalla's Serene Productions with Dharma's creative expertise.¹⁰¹ The collaboration between Poonawalla and Johar aims to broaden Dharma's presence on the global stage, capitalizing on the increasing popularity of Bollywood worldwide.¹⁰² Backed by Poonawalla's resources, Dharma is poised to develop high-budget productions to engage audiences in emerging markets across Asia, the Middle East, and North America.¹⁰³

The trajectory of India's media and entertainment sector in 2024 reflects a paradigm shift fuelled by dynamic market forces and rapid digitalization.¹⁰⁴ Amidst escalating global and domestic competition, the industry is witnessing

93. See *id.*

94. See *Zee Drags Sony to National Company Law Tribunal for Calling Off USD 10-billion Merger*, TEL. ONLINE (Jan. 1, 2024, 6:14 AM), <https://www.telegraphindia.com/business/zee-entertainment-drags-sony-to-national-company-law-tribunal-for-calling-off-usd-10-billion-merger-deal/cid/1996013> [<https://perma.cc/8GYX-GLXX>].

95. See Rajesh Kumar, *Zee and Sony Reach Amicable Settlement, Agree to Withdraw All Cases at Singapore Arbitration Centre and NCLT*, LIVELAW.IN (Aug. 29, 2024, 12:55 AM), <https://www.live-law.in/news-updates/zee-and-sony-reach-amicable-settlement-agree-to-withdraw-all-cases-at-singapore-arbitration-centre-and-nclt-267991> [<https://perma.cc/VGL7-CXW2>].

96. Chopra, *supra* note 92.

97. Chaturvedi, *supra* note 79.

98. See *Sony Corporate Strategy Meeting 2023*, SONY NEWS RELEASES (May 18, 2023), <https://www.sony.com/en/SonyInfo/News/Press/202023/23-017E/> [<https://perma.cc/VG8P-N8QF>].

99. Travelli, *supra* note 85.

100. Sadam & Mukherjee, *supra* note 80.

101. See *id.*

102. See *id.*

103. See *id.*

104. See *id.*

unprecedented growth and innovation.¹⁰⁵ These strategic initiatives are not only reshaping the Indian entertainment landscape but also positioning the country as a pioneering force in the global media arena.¹⁰⁶

V. China

A. NOTABLE REVISIONS TO THE DECLARATION THRESHOLDS OF MERGERS, ACQUISITIONS, AND JOINT VENTURES¹⁰⁷

On January 22, 2024, the State Council of the People's Republic of China (PRC) issued the revised Declaration Standard for the Concentration of Business Operators.¹⁰⁸ These new regulations significantly increase the threshold for declarations of mergers and acquisitions, as well as joint ventures, meaning that small-scale concentrations are no longer required to be filed with the State Administration for Market Regulation for anti-monopoly review.¹⁰⁹

The key amendments are as follows: (1) The total global turnover of all undertakings involved in the concentration for the preceding fiscal year exceeds RMB 12 billion, previously RMB 10 billion, with at least two of these undertakings each having a turnover exceeding RMB 800 million, previously RMB 400 million, within China.¹¹⁰ (2) The total turnover within China of all undertakings involved in the concentration for the preceding fiscal year exceeds RMB 4 billion, previously RMB 2 billion, with at least two of these undertakings each having a turnover of more than RMB 800 million, previously RMB 400 million, within China.¹¹¹

Moreover, the new regulation also explicitly states that antitrust agencies can require operators to declare their concentrations when evidence suggests that such concentrations may exclude or restrict competition, even if they do not meet the thresholds.¹¹²

105. See *id.*

106. Sadam & Mukherjee, *supra* note 80.

107. See 经营者集中申报标准 (Jīngyíng zhě jìzhōng shēnbào biāozhǔn) [Declaration Standard for the Concentration of Business Operators] (promulgated by State Council Order No. 773, Jan. 22, 2024), at 1, 1–2 (P.R.C.), https://www.samr.gov.cn/fldes/jyzjsbxbz/art/2024/art_e-b4235b9a196486c8df15c7a61d51744.html [<https://perma.cc/UX7T-NU68>].

108. See *id.*

109. See *id.*

110. See *id.* art. 3(1).

111. See *id.* art. 3(2).

112. See *id.* art 4.

B. AMENDMENTS TO THE CORPORATE LAW ADDING NEW MERGER CATEGORIES SUBJECT TO SIMPLIFIED PROCEDURES

The amended Company Law of the PRC was issued on December 29, 2023, and came into effect on July 1, 2024.¹¹³ The revised law introduces two new special types of corporate mergers where the decision-making process can be simplified.¹¹⁴ Specifically: (1) In cases where a company merges with another company in which it holds more than ninety percent of the shares, the merged entity is not required to obtain approval from the shareholders' meeting.¹¹⁵ Nonetheless, it is required to inform the remaining shareholders, who retain the right to request that the company acquire their shares at a reasonable price.¹¹⁶ (2) In cases where the consideration for the merger does not exceed ten percent of the company's net assets, the merger can proceed without a resolution from the shareholders' meeting, unless the company's articles of association stipulate otherwise.¹¹⁷

C. MEASURES TO BOOST FOREIGN INVESTMENT

In 2024, various Chinese government agencies have enacted measures and programs to create a more open and regulated foreign investment management system and enhance the attraction of foreign investment.¹¹⁸

On March 19, 2024, the State Council of the PRC published the Action Plan to Promote High-level Opening-up and Attract Foreign Investment,¹¹⁹ which proposed several measures to expand market access for foreign investors: (1) reducing the "negative list" for foreign investment access and removing all restrictions on foreign investment in the manufacturing sector;¹²⁰ (2) in the science and technology innovation sector, China will launch a pilot program for foreign investment within the free trade zones of Beijing, Shanghai, and Guangdong, allowing qualified foreign investors to make investments in areas such as the gene diagnostic and treatment technologies;¹²¹ (3) in the financial sector, the permitted scope will be

113. 公司法 (Gōngsī fǎ) [Company Law] (promulgated by Presidential Order No. 15, Dec. 29, 2023, Jul. 1, 2024) (P.R.C.), http://www.npc.gov.cn/npc/c2/c30834/202312/t20231229_433999.html [<https://perma.cc/Y6H4-QNWN>].

114. See *id.* art. 219.

115. See *id.*

116. See *id.*

117. See *id.*

118. See 扎实推进高水平开放大力吸引和利用外资行动计划 (Zhānshì tuījìn gāo shuǐpíng kāifàng dàlì xīyǐn hé lìyòng wàizī xíngdòng jìhuà) [Action Plan to Solidly Promote High-level Opening-up and Vigorously Attract and Utilize Foreign Investment] (promulgated by State Council No. 9, Feb. 28, 2024, Feb. 28, 2024) (P.R.C.) [hereinafter Action Plan to Solidly Promote High-level Opening Up], https://english.www.gov.cn/policies/latestreleases/202403/19/content_WS65f954f4c6d0868f4e8e539a.html#:~:text=Action%20plan%20to%20promote%20high,opening%20Dup%2C%20attract%20foreign%20investment&text=China%20will%20further%20promote%20high,State%20Council%20on%20March%2019 [<https://perma.cc/W35L-N3NA>].

119. *Id.*

120. *Id.*

121. *Id.*

expanded for foreign financial institutions in the domestic banking, insurance,¹²² and bond market;¹²³ and (4) the scope of the pilot program that allows qualified foreign limited partners to engage in investments in China will be extended.¹²⁴

Echoing this, on September 6, 2024, the National Development and Reform Commission and the Ministry of Commerce of the PRC jointly issued the official version of the Special Administrative Measures for Foreign Investment Access (Negative List) for the year 2024.¹²⁵ The new policy took effect on November 1, 2024.¹²⁶ This updated version has reduced the entry restrictions for foreign investment from thirty-one to twenty-nine.¹²⁷ In particular, it abolishes restrictions on publication printing and the production of traditional Chinese medicine; as such, all restrictions on foreign investment entry in the manufacturing sector have been lifted.¹²⁸

D. REFORM OPINIONS OF THE CSRC TO SUPPORT LISTED FIRMS' M&AS AND RESTRUCTURING

On March 15, 2024, the China Securities Regulatory Commission (CSRC) issued the Opinions on Strengthening the Supervision of Listed Companies (for Trial Implementation),¹²⁹ which set forth several initiatives to support listed companies' M&As and restructuring. The opinions encourage these companies to pursue M&A and restructuring using various financial tools, including shares, cash, and directional convertible bonds.¹³⁰ They also advocate for reasonable determination of transaction prices based on market negotiations.¹³¹ Moreover, the opinions highlight that the CSRC will streamline its review mechanisms to expedite small-scale M&As and restructurings, as well as those involving high-quality large companies.¹³²

On September 24, 2024, the CSRC announced the Reform Opinions to Guide the M&A and Restructuring of Listed Companies in China.¹³³ The opinions

122. *Id.*

123. *Id.*

124. Action Plan to Solidly Promote High-level Opening Up, *supra* note 118.

125. See Special Management Measures for Foreign Investment Access (Negative List) (2024 edition) (promulgated by the State Council and Ministry of Com., Sep. 6, 2024, Nov. 1, 2024) (P.R.C.), https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202409/t20240907_1392875.html [<https://perma.cc/Z7E5-QXG6>].

126. *Id.*

127. *Id.*

128. *Id.*

129. See Opinions on Strengthening the Supervision of Listed Companies (for Trial Implementation) (promulgated by China Sec. Regul. Comm'n Commission, Mar. 15, 2024, Mar. 15, 2024) (P.R.C.), <http://www.csrc.gov.cn/csrc/c100028/c7467850/content.shtml> [<https://perma.cc/ZMC5-AJA9>].

130. *Id.* art. 15.

131. *Id.* art. 13.

132. *Id.* art. 17.

133. See Reform Opinions to Guide the M&A and Restructuring of Listed Companies in China (promulgated by China Sec. Regul. Comm'n, Sept. 24, 2024, Sept. 24, 2024) (P.R.C.),

explicitly advocate for cross-industry M&As, particularly those focused on strategic emerging and future industries, and also advocate for the acquisition of unprofitable assets that have the potential to replenish supply chains or improve capabilities in key technologies.¹³⁴ For firms listed on the Science and Technology Innovation Board and the Growth Enterprise Market, the opinions support acquiring upstream and downstream assets by relaxing the scrutiny requirements for the acquired assets.¹³⁵ Meanwhile, the opinions also highlight regulatory flexibility and a streamlined review process to facilitate M&A and restructuring of listed companies.¹³⁶

VI. Brazil

A. INTRODUCTION

In 2024, Brazil made significant strides towards the implementation of supplementary laws as part of the consumption tax reform, which was approved by the Brazilian House of Representatives in December 2023.¹³⁷ These regulations, along with others detailed below, represent crucial and long-awaited efforts to reduce business bureaucracy and inefficiency, thereby creating a more favorable environment for investments.

B. NEW REGULATIONS FOR PUBLIC OFFERINGS FOR ACQUISITION OF SHARES

On October 29, 2024, the Brazilian Securities and Exchange Commission (CVM) published Resolutions 215 and 216, which replaced the previous Resolution CVM 85, to implement a new regulatory framework for public tender offers (also known, in Portuguese, as “Oferta Pública de Aquisição de Ações” or “OPAs”).¹³⁸ The new rules are the result of discussions and a public hearing held between 2023 and 2024 aiming to simplify, reduce costs and speed up the OPA registration procedure before the CVM,¹³⁹ and will come into force on July 1, 2025.

In addition, the CVM has also established that an OPA shall be mandatory whenever the controlling shareholder or any related person increases its stake by acquiring outstanding shares resulting in a reduction of the total amount of

https://www.amac.org.cn/xwfb/zjyw/202409/t20240925_26023.html [https://perma.cc/Z8BF-49KM].

134. *Id.* art. 1.

135. *Id.*

136. *Id.* art. 4.

137. Diego Bonomo, *Brazil's Historic Tax Reform: A Primer*, GLOB. POL'Y WATCH (Dec. 18, 2023), <https://www.globalpolicywatch.com/2023/12/brazils-historic-tax-reform-a-primer/> [https://perma.cc/6QJD-6YFJ].

138. See CVM edita regra para ofertas públicas de aquisição de ações e introduz procedimentos mais simples [CVM publishes rules for public offering for acquisition of shares and introduces simpler procedures], MIN. FIN.GOV.BR (Oct. 29, 2024) (Braz.) [hereinafter *C.V.M. Publishes OPA Rules*], <https://www.gov.br/cvm/pt-br/assuntos/noticias/2024/cvm-edita-regra-para-ofertas-publicas-de-aquisicao-de-acoes-e-introduz-procedimentos-mais-simples> [https://perma.cc/A8KK-FV3N].

139. *Id.*

outstanding shares of the same class and type below fifteen percent.¹⁴⁰ Another significant change is the reduction of the necessary quorum of approval for the deregistration as a publicly-held company.¹⁴¹ The new provision establishes a simple majority of shareholders as the new quorum for approval of the OPA, provided that the number of outstanding shares is less than five percent of the share capital.¹⁴² In a similar context, when a non-controlling shareholder aims to acquire control of a certain company, the procedure may be carried out in a unified manner, along with the deregistration OPA procedure.¹⁴³ Previously, the procedures were supposed to be conducted separately.¹⁴⁴

The resolutions also introduce two registration procedures for OPAs: ordinary and automatic.¹⁴⁵ Whenever mandatory, the OPA procedure shall be ordinary, subject to prior analysis by the CVM, while non-mandatory OPA procedures that do not involve an exchange of securities registration are automatically registrable.¹⁴⁶

C. SPORTS BETTING REGULATION

The enactment of Federal Law 14,790/2023, also known as the new Sports Betting Law, in December 2023 introduced a clear path for companies that seek to exploit sports betting and online casino games or gambling in Brazil.¹⁴⁷ For that purpose, the company must obtain a government authorization, and comply with several requirements, including technical parameters and the adoption of internal policies in terms of corporate compliance.¹⁴⁸

During the year 2024, the Ministry of Finance has published regulations detailing the requirements and criteria for obtaining the authorization, the timeframe for the regularization of the companies already operating in Brazil, and the financial and technical requirements which must be observed.¹⁴⁹ As of January 2025, the companies that do not have authorization will be subject to the applicable penalties.¹⁵⁰

140. *Id.*

141. *Id.*

142. *Id.*

143. *See id.*

144. *See CVM Publishes OPA Rules, supra* note 138.

145. *Id.*

146. *CVM Publishes OPA Rules, supra* note 138.

147. Caio de Souza Loureiro, *Brazilian Sports Betting Law at a Glance*, TOZZINI FREIRE ATT'YS (Jan. 23, 2024), <https://tozzinifreire.com.br/en/boletins/brazilian-sports-betting-law-at-a-glance> [<https://perma.cc/DHJ2-9Y6G>].

148. *Id.*

149. *Id.*

150. Simone do Vale, *Brazil's 2025 Online Casino & Sport Betting Regulation: Why bet.br Migration Protects Players*, ENV MEDIA (Jan. 20, 2025), <https://env.media/online-gambling-regulation-brazil-2025/> [<https://perma.cc/PU7F-WF53>].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

92 THE YEAR IN REVIEW

[VOL. 59]

The Ministry of Finance received, until August 20, 2024, 113 requests for authorization¹⁵¹ to operate in the sports betting and online casino games or gambling businesses, including relevant foreign companies.¹⁵² If all requirements are met, the company will be entitled to operate when the Brazilian regulated betting market, already considered one of the largest in the world, enters into force in 2025.¹⁵³

Given that one of the legal requirements is for the company to have a Brazilian partner holding at least twenty percent of the share capital, combined with the interest of foreign companies in securing a stake of this market, the new legislation may cause an increase in M&A transactions in that industry.¹⁵⁴ In any case, the authorization granted may be reviewed by the granting authority whenever there is a change of control or corporate reorganization in such companies.¹⁵⁵ If the authorized company undergoes any merger, amalgamation, transformation, or modification of direct or indirect corporate control, it must submit all necessary documentation to the Ministry of Finance within thirty days of the transaction to confirm compliance with all rules and conditions.¹⁵⁶ Alternatively, the company may submit a prior analysis to the Ministry of Finance to ensure that the intended transaction will not impair the granted authorization.¹⁵⁷ The government authority shall review the request within 150 days of receiving the documents or consultation.¹⁵⁸

151. *Ministério da Fazenda recebeu 113 pedidos de autorização de empresas que querem oferecer apostas de quota fixa em janeiro* [The Ministry of Finance received 113 requests for authorization from companies wishing to offer fixed-odds betting in January], MIN. FIN.GOV.BR (Aug. 21, 2024) (Braz.) [hereinafter M.F. Received 113 Requests], <https://www.gov.br/fazenda/pt-br/assuntos/noticias/2024/ago-sto/ministerio-da-fazenda-recebeu-113-pedidos-de-autorizacao-de-empresas-que-querem-oferecer-apostas-de-quota-fixa-em-janeiro> [<https://perma.cc/4J3N-RDMZ>].

152. Silvia Rosa-São Paulo, *Race to Register Bets Attracts 113 Companies and Should Generate Acquisitions*, PIPELINE VALOR ECONÔMICO (Aug. 21, 2024), <https://pipelinevalor.globo.com/-negocios/noticia/corrida-para-registro-das-bets-atrai-estrangeiros-e-deve-gerar-manda.ghtml> [<https://perma.cc/U425-YF57>].

153. M.F. Received 113 Requests, *supra* note 151.

154. Rosa-São Paulo, *supra* note 152.

155. *Id.*

156. 14,1790, de 29 Dezembro 2023, Código Civil [C.C.] de Dec. 29, 2023 (Braz.).

157. *Id.*

158. *Id.*

VII. United States

Several important developments relating to U.S. regulation of international mergers and acquisitions occurred in 2024.

A. CFIUS CONTINUES INCREASED SCRUTINY OF FOREIGN DIRECT INVESTMENT IN THE UNITED STATES

In July 2024, the Committee on Foreign Investment in the United States (CFIUS) issued its annual report covering calendar year 2023 (Report).¹⁵⁹ The Report revealed that, in 2023, CFIUS reviewed a total of 342 notices and declarations of covered transactions or covered real estate transactions, opened inquiries for sixty transactions through its non-notified process, and issued a record number of penalties.¹⁶⁰

There were 109 declarations of covered transactions and 233 written notices of transactions filed with CFIUS in 2023.¹⁶¹ CFIUS conducted a subsequent “investigation” with respect to 128 of those 233 notices, meaning that approximately fifty-five percent of notices proceeded to the investigation phase, which is slightly down from the fifty-seven percent in 2022.¹⁶² CFIUS adopted mitigation measures and conditions in forty-three instances, which totaled approximately 18 percent of the total number of 2023 notices.¹⁶³

B. NEW FINAL RULES EXPAND CFIUS’S REAL ESTATE JURISDICTION AND ENFORCEMENT POWERS, INCREASE PENALTY LIMITS SIGNIFICANTLY

1. *Final Rule Expanding CFIUS’s Real Estate Jurisdiction*

On November 7, 2024, the U.S. Department of the Treasury (Treasury) issued a final rule expanding both the types of military installations covered by its regulations governing reviews of real estate transactions and the number of military installations subject to those reviews.¹⁶⁴ The new rule impacts transactions entered into on or after December 9, 2024.¹⁶⁵

159. See Anton Dzhuplin et al., *International M&A & Joint Ventures*, 58 ABA/ILS YIR (n.s.) 125 (2024).

160. 2023 ANNUAL REPORT TO CONGRESS, TREAS. CFIUS ANN. REP. (2023) [hereinafter 2023 Annual Report], <https://home.treasury.gov/system/files/206/2023CFIUSAnnualReport.pdf> [<https://perma.cc/5764-VEGC>].

161. *Id.* at 4.

162. 2022 ANNUAL REPORT TO CONGRESS, TREAS. CFIUS ANN. REP. (2022), https://home.treasury.gov/system/files/206/CFIUS%20-%20Annual%20Report%20to%20Congress%20CY%202022_0.pdf [<https://perma.cc/FV2Y-QE56>].

163. See 2023 ANNUAL REPORT TO CONGRESS, *supra* note 162, at 14.

164. Definition of Military Installation and the List of Military Installations in the Regulations. Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the U.S., 89 Fed. Reg. 88128 (Nov. 7, 2024).

165. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

94 THE YEAR IN REVIEW

[VOL. 59]

Specifically, the final rule changes the definition of “military installation” in the regulation to include more types of facilities and to allow CFIUS to add additional covered installations in the future.¹⁶⁶ The new definition adds the following to the definition of military installation: (i) Space Force bases, stations, and major annexes; (ii) U.S. Army major depots, arsenals, and military terminals; (iii) U.S. Marine Corps installations, logistics battalions, and support facilities; (iv) military ranges owned by any branch of the military anywhere in the United States; and (v) major support activities and annexes to Naval bases and air stations.¹⁶⁷

2. Final Rule Regarding Penalty Provisions, Provision of Information, Negotiation of Mitigation Agreements, and Other Procedures

On November 26, 2024, Treasury issued a final rule that expands the enforcement powers of CFIUS and significantly increases the potential financial consequences for noncompliance.¹⁶⁸ The final rule enters into effect on December 26, 2024.¹⁶⁹

Specifically, CFIUS can now compel not only transaction parties, but also unrelated third parties, such as banks, underwriters, or certain service providers, to transaction parties in order to provide information relevant to determining whether a transaction poses national security risks.¹⁷⁰ To address delays in resolving national security concerns, CFIUS may now impose a deadline, with a minimum of three business days, for transaction parties to respond to mitigation proposals.¹⁷¹ The final rule also extends the timeframe for parties to respond to penalty notices and seek reconsideration.¹⁷²

Finally, the final rule raises the maximum civil penalty for violations of CFIUS regulations or agreements to \$5 million per violation.¹⁷³ This marks a significant increase from the previous \$250,000 cap.¹⁷⁴

C. FINAL REGULATIONS IMPLEMENTING OUTBOUND INVESTMENT SECURITY PROGRAM

On November 15, 2024, Treasury published the final regulations to implement Executive Order 14105 of August 9, 2023, which was intended to address the advancement by the PRC, and other countries of concern, in sensitive technologies

166. *Id.*

167. *Id.*

168. Penalty Provisions, Provision of Information, Negotiation of Mitigation Agreements, and Other Procedures Pertaining to U.S. Real Estate Investments and Transactions by Foreign Persons, 89 Fed. Reg. 93179 (Nov. 26, 2024) [hereinafter Penalty Provisions].

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. Penalty Provisions, 89 Fed. Reg. at 88128.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

M&A and JOINT VENTURES 95

critical for military, intelligence, surveillance, or cyber-enabled capabilities.¹⁷⁵ The final rule, which will be administered by the newly created Office of Global Transactions in the Treasury's Office of Investment Security, will become effective on January 2, 2025.¹⁷⁶

The final rule builds on the advance notice of proposed rulemaking issued by Treasury in August 2023 and the proposed rule issued by Treasury in June 2024 and provides the operative regulations as well as an explanatory discussion regarding the final rule's intent and application.¹⁷⁷ Executive Order 14105 directed the Secretary of the Treasury to establish an Outbound Investment Security Program that:

Prohibits U.S. persons from engaging in certain transactions with persons of a country of concern involving certain technologies and products that pose a particularly acute national security threat to the United States; and

Requires U.S. persons to notify Treasury of certain other transactions with persons of a country of concern involving certain technologies and products that may contribute to the threat to the national security of the United States.¹⁷⁸

The three categories of national security technologies and products covered by the Outbound Investment Security Program are (1) semiconductors and microelectronics; (2) quantum information technologies; and (3) artificial intelligence.¹⁷⁹

The final rule provides details on the subsets of technologies and products within these sectors and implements a new program that will help address the advancement of key technologies and products by countries of concern that may use them to threaten U.S. national security.¹⁸⁰ The final rule also defines key terms and provides guidance on various aspects of the program's implementation, e.g., application of the "knowledge standard."¹⁸¹

175. Provisions Pertaining to U.S. Investments in Certain Nat'l Sec. Tech. and Products in Countries of Concern, 89 Fed. Reg. 90398 (Nov. 15, 2024) [hereinafter Provisions Pertaining to U.S. Investments].

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. Provisions Pertaining to U.S. Investments, 89 Fed. Reg. at 90398.

181. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

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International Transportation

JAMES BORDER, ANDREW M. DANAS, JOSHUA DUBOIS AND ANDREW DEZJOT¹

I. Re-Visiting What Constitutes a Transportation Worker

On April 12, 2024, the United States Supreme Court issued its decision in *Bissonnette v. LePage Bakeries Park St., LLC*,² in which the Court re-revisited what constitutes a “transportation worker” engaged in interstate or foreign commerce entitled to the exclusion from enforcement of contractual arbitration agreements under the Federal Arbitration Act (FAA).³ It was the second Supreme Court decision addressing this issue in two years.⁴ The Court held in *Bissonnette* that a worker does not need to be employed within the transportation industry to fall within the scope of the exclusion.⁵

Arbitration agreements are generally “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.”⁶ But Section One of the FAA includes an exception that “nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.”⁷

In 2022, the Supreme Court clarified the scope of the transportation worker exclusion by holding, in *Southwest Airlines Co. v. Saxon*,⁸ that the exemption does not apply to all employees of a transportation industry company, but only to “transportation workers” who play a direct and necessary role in the free flow of goods across borders.⁹ In its 2024 *Bissonnette* decision, the Supreme Court revisited and clarified its holding in *Saxon*, ruling that a “transportation worker need not work in the transportation industry to fall within the exemption from the FAA

1. James Border, Committee Editor. Authors in order of appearance: Andrew M. Damas (Re-Visiting What Constitutes a Transportation Worker and California AB 98), Joshua DuBois (The U.S. Coast Guard Addresses Maritime Cybersecurity Concerns), Andrew Dezjot (Response of the United States Trade Representative to Complaints of Chinese Monopolization of the Shipbuilding, Maritime, and Logistics Industries), and James Border (Source Taxation Changes for International Air and Sea Transportation under the United Nations Model Tax Convention).

2. *Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 256 (2024).

3. 9 U.S.C. §§ 1-16 (1947).

4. See *Southwest Airlines Co. v. Saxon*, 596 U.S. 450, 462 (2022).

5. *Bissonnette*, 601 U.S. at 265.

6. 9 U.S.C. § 2.

7. *Id.* § 1.

8. *Saxon*, 596 U.S. at 458.

9. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

98 THE YEAR IN REVIEW

[VOL. 59]

provided by Section 1.”¹⁰ In doing so, the Court reversed and vacated a split decision of the United States Court of Appeals for the Second Circuit¹¹ and resolved a conflict between the Second Circuit and the First Circuit.¹²

Bissonnette involved two franchisees who owned the rights to distribute bakery products in parts of Connecticut.¹³ The products were baked and then sent to a warehouse in Connecticut, where the plaintiffs, pursuant to their distribution agreements, would pick up and deliver the products in their territories, while also finding new retail outlets, advertising goods, setting up promotional displays, stocking shelves, replacing expired products, and maintaining and ordering inventory.¹⁴

A split panel of the Second Circuit disagreed as to whether the two independent distributors were “transportation workers” within the scope of the FAA exemption to allow their class action lawsuit for alleged violations of the Fair Labor Standards Act¹⁵ and Connecticut wage laws to proceed against the manufacturer of the goods that were being delivered.¹⁶ The majority found that the exclusion did not apply.¹⁷

The original Second Circuit decision was rendered one month before the Supreme Court issued its 2022 decision in *Saxon*.¹⁸ Upon a rehearing after *Saxon* was decided, the Second Circuit majority found that, despite clarifying that not everyone who works in the transportation industry is a transportation worker for purposes of the FAA exemption, *Saxon* did not affect or set aside Second Circuit case law which held that the FAA exclusion is limited to workers involved in the transportation industries, not workers who incidentally transport goods interstate as part of their job in another industry.¹⁹

Reasoning that because the plaintiff truck drivers in *Bissonnette* worked in the baking industry, not the transportation industry, and that the defendants’ customers were paying for baked goods, not transportation services, the Second Circuit “held that an individual works in a transportation industry and may therefore be exempt under Section 1 only “if the industry . . . pegs its charges chiefly to the movement of goods or passengers, and the industry’s predominant source of commercial revenue is generated by that movement.”²⁰

The Supreme Court reversed and vacated the Second Circuit’s decision, holding that there is no requirement “that a transportation worker must work for a company in the transportation industry to be exempt under Section 1 of the

10. *Bissonnette*, 601 U.S. at 265; see 9 U.S.C. §§ 1–16.

11. *Bissonnette v. LePage Bakeries Park St., LLC*, 49 F.4th 655, 655 (2d Cir. 2022), *vacated*, 601 U.S. 246 (2024).

12. *Bissonnette*, 601 U.S. at 252.

13. *Id.* at 249.

14. *Id.*

15. 29 U.S.C. §§ 201–219 (1938).

16. See *Bissonnette v. LePage Bakeries Park St., LLC*, 33 F.4th 650, 652 (2d Cir. 2022).

17. See *id.* at 657.

18. See generally *id.*

19. *Bissonnette*, 49 F.4th at 661.

20. *Id.*

FAA.”²¹ Writing for a unanimous Court, Chief Justice Roberts stated that because “the Second Circuit in this case fashioned its transportation-industry requirement without any guide in the text of Section 1 or our precedents, it had to figure out for itself what constituted a ‘transportation industry.’”²² But, the Court found that the test fashioned by the Second Circuit would “often turn on arcane riddles about the nature of a company’s services” and could result in regular, slow, and expensive mini-trials on transportation industry issues related to the FAA, a statute that seeks to avoid litigation.²³

Chief Justice Roberts also rejected a public policy argument that, without an implied transportation-industry exemption, the Section 1 exemption would sweep too broadly “because virtually all products move in interstate commerce” and “virtually all workers who load or unload goods—from pet shop employees to grocery store clerks—will be exempt from arbitration.”²⁴ He wrote:

We have never understood Section 1 to define the class of exempt workers in such limitless terms. To the contrary, as we held in *Saxon*, a transportation worker is one who is “actively” “‘engaged in transportation’ of . . . goods across borders via the channels of foreign or interstate commerce.” In other words, any exempt worker “must at least play a direct and ‘necessary role in the free flow of goods’ across borders.” These requirements “undermine[] any attempt to give the provision a sweeping, open-ended construction,” instead limiting Section 1 to its appropriately “narrow” scope.²⁵ Notwithstanding the Court’s clarification that a “transportation worker” need not work in the transportation industry to fall within the Section 1 exemption of the FAA, the Court’s decision in *Bissonnette* expressed no opinion on any alternative grounds in favor of arbitration raised in the lower court proceedings, including an argument that the petitioners were not transportation workers or that they were not “engaged in foreign or interstate commerce” within the meaning of Section 1 because they delivered baked goods only in Connecticut.²⁶ Such issues presumably will continue to be litigated in the lower courts until either a consensus is reached or a circuit split requires further intervention by the Supreme Court.

II. California AB 98

On September 29, 2024, California Governor Gavin Newsom signed Assembly Bill 98 (AB 98)²⁷ into law, establishing uniform state-wide rules governing the building of new and expanded logistics facilities within the State of California,

21. *Bissonnette*, 601 U.S. at 265; see 9 U.S.C. §§ 1–16.

22. *Bissonnette*, 601 U.S. at 254.

23. *Id.* at 247.

24. *Id.* at 256.

25. *Id.*

26. *Id.*

27. A.B. 98 Gen. Assemb., 2023-2024 Reg. Sess. (Cal. 2024).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

100 THE YEAR IN REVIEW

[VOL. 59]

including requirements for related trucking routes and operations.²⁸ Adopted in response to the significant development of e-commerce shipments and the related growth of warehouse and distribution facilities near California port and trucking corridors, AB 98 was intended, in part, to address heavy truck emissions.²⁹ The new law, primarily scheduled to take effect on January 1, 2026, supplants local rules and controls governing land use, building design and development, and truck routing for logistics facilities.³⁰ Instead, the new law declares that “the movement . . . of freight and the impact of this activity on public health and communities across the state . . . is a matter of statewide concern and is not a municipal affair.”³¹

Under the new law, the design and location of new or expanded logistics facilities and related trucking operations in California, will be subject to uniform state-wide legal criteria.³² California AB 98 applies to operations involving “heavy duty” trucks³³ serving properties subject to “logistic use.” Under the law, a “logistics use” property “means a building in which cargo, goods, or products are moved or stored for later distribution to business or retail customers, or both, that does not predominantly serve retail customers for onsite purchases, and heavy-duty trucks are primarily involved in the movement of the cargo, goods, or products.”³⁴

AB 98 further excludes the following from the definition of “logistics use”: “(1) Facilities where food or household goods are sold directly to consumers and are accessible to the public; (2) A building primarily served by rail to move cargo goods or products; (3) A Strategic Intermodal Facility.”³⁵

AB 98 has two main components: (1) new warehouse and logistics facilities design and build standards, based on the size and location of the facilities, and (2) truck routing requirements.³⁶ The law also has additional requirements, including

28. Note that AB 98 also contains certain environmental and two-to-one housing replacement requirements for housing units that are demolished to build or expand logistics facilities subject to the new law. See, e.g., Cal. Gov’t Code § 65098.6 (West). Details of these provisions of the law are beyond the scope of this article.

29. A.B. 98 Gen. Assemb., 2023-2024 Reg. Sess., *Assem. Floor Analysis* (Cal. 2024).

30. A.B. 98 Gen. Assemb., 2023-2024 Reg. Sess. (Cal. 2024). A.B. 98 amends Division 1 of Title 7 of the California Government Code by adding Chapter 2.8 *Warehouse Design and Build Standards* and Section 65098; adding Section 65302.02 to the Government Code; and adding Sections 40458.5 and 40522.7 to the California Health and Safety Code.

31. Cal. Gov’t Code § 65098.8 (2025).

32. *Id.*

33. Under the law, a “heavy duty truck” is defined as being either a Class 7 or Class 8 truck. A Class 7 truck is defined as being a truck with a gross vehicle weight (“gvw”) rating of 26,001 to 33,000 pounds and a Class 8 truck having a gvw rating greater than 33,000 pounds. See Cal. Gov’t Code § 65098(d) (West).

34. Cal. Gov’t Code § 65098.8 (West).

35. Cal. Gov’t Code § 65098(d) (West). The law further defines a “Strategic Intermodal Facility” as being a project that satisfies all of the following requirements: (i) logistics facilities, including warehousing and transloading facilities, served by rail; (ii) intermodal freight transport services; (iii) all facility structures and related rail operations are located within a single site footprint. See Cal. Gov’t Code § 65098(d)(3)(B) (West).

36. A.B. 98 Gen. Assemb., 2023-2024 Reg. Sess., ch. 931, § 1 (Cal. 2024).

environmental, for localities and facilities located in a warehouse concentration region, largely located in the California Inland Empire region.³⁷

The new AB 98 design standards will not apply to logistics facilities in existence or in development as of September 30, 2024.³⁸ But the new standards will apply to all new logistics facilities as of January 1, 2026.³⁹ It will also apply to existing facilities that are expanded by more than twenty percent.⁴⁰

The new logistics facilities standards established by AB 98 are based on both the size of the facility and its proximity to certain “sensitive receptors,” which include residences, schools, daycare facilities, parks, nursing homes, and hospitals.⁴¹

All new logistics facilities subject to AB 98 will be required to meet basic “21st Century warehouse standards.”⁴² In addition to these basic standards, additional design standards are required of warehouses larger than 250,000 square feet, which the law designates as “Tier 1 21st century warehouses.”⁴³

Included in the AB 98 mandatory design standards are requirements for the location of truck parking; truck bays; buffer zones; and signage; as well as mandates related to energy efficiency and electric vehicle charging readiness.⁴⁴ AB 98 also phases in the mandatory use of zero-emission forklifts where operationally feasible.⁴⁵

To minimize truck traffic exposure to sensitive receptors, AB 98 also requires that any new logistics use development be sited on roadways that satisfy certain criteria related to arterial roads; collector roads; major thoroughfares; and local roads that predominately serve commercial uses.⁴⁶ The law states that the purpose of the new routing requirements “[i]s to ensure that logistics use developments . . . are sited in locations that minimize adverse impacts on residential communities and enhance transportation efficiency.”⁴⁷ This is achieved by restricting logistics use development to roadways that are suited to handle the associated traffic and that predominately serve commercial uses.⁴⁸

California cities and counties must update their local truck route circulation requirements to comply with AB 98’s truck travel routing and signage requirements.⁴⁹ Most localities must meet this deadline by January 1, 2028.⁵⁰ But communities located in the warehouse concentration region have an earlier

37. See generally Cal. Health & Safety Code § 40458.5, 40522.7 (West); see also Cal. Gov’t §§ 65098(h), 65098(1)(c) (West).

38. A.B. 98 Gen. Assemb., 2023-2024 Reg. Sess., ch. 931, § 65098(a)(1) (Cal. 2024).

39. *Id.* § (1).

40. *Id.*

41. Cal. Gov’t § 65098(e) (West).

42. Cal. Gov’t Code 65098(a)(1), (g)(1) (West).

43. A.B. 98 Gen. Assemb., 2023-2024 Reg. Sess., ch. 931, § 65098(a)(1) (Cal. 2024).

44. *Id.* § (1).

45. *Id.* § 65098(a)(5)(a).

46. Cal. Gov’t Code §§ 65098.2.7(b)(1)(A–D), 65098.3(a) (West).

47. Cal. Gov’t Code §§ 65098.2.7(a) (West).

48. *Id.*

49. A.B. 98 Gen. Assemb., 2023-2024 Reg. Sess., ch. 931, § (2) (Cal. 2024).

50. *Id.*

deadline on January 1, 2026.⁵¹ The State of California is authorized to fine any county or city jurisdiction “up to \$50,000 every six months,” if they fail to make the truck route circulation updates required by the law.⁵²

In addition to mandating that localities update their local circulation requirements, AB 98 demands all new logistics facility operators to “establish and submit . . . a truck routing plan” meeting the law’s new requirements.⁵³ This must be done before a certificate of occupancy can be issued by a locality to authorize operations at the facility.⁵⁴

AB 98 has been the subject of significant criticism from both local county and city interests. Critics object to the State establishing uniform zoning and design criteria in an area that is usually governed by local zoning and building laws. Other groups, including environmental groups, have suggested that the new law is too weak in addressing environmental health concerns related to warehousing and trucking operations. It is thus possible that AB 98 will be subject to amendment by the California legislature in the future.

III. The U.S. Coast Guard Addresses Maritime Cybersecurity Concerns

Recently, significant attention has been given to the nation’s maritime cybersecurity infrastructure.⁵⁵ The United States Coast Guard Cyber Command highlighted four key points regarding this infrastructure in its report: 2023 Cyber Trends and Insights in the Marine Environment.⁵⁶ The report states that the marine environment was impacted by: (1) an increase in reported “Advanced Persistent Threats;” (2) an eighty percent increase in reported ransomware incidents; (3) consistent vulnerabilities with prior reports; and (4) the introduction of new vulnerabilities due to the increased use internet-connected technologies.⁵⁷ The Coast Guard, looking forward to 2024, keyed in on a greater frequency of ransomware incidents and the increasingly prevalent use of smart technology in ports.⁵⁸

On February 21, 2024, President Joe Biden issued the Executive Order on Amending Regulations Relating to the Safeguarding of Vessels, Harbors, Ports, and Waterfront Facilities of the United States.⁵⁹ After finding that the United States was being harmed internationally by “persistent and increasingly sophisticated malicious cyber campaigns,” the President amended 33 C.F.R. Part 6, which deals

51. *Id.* § 65302.02(h).

52. Cal. Gov’t Code § 65302.02(h)(1) (West).

53. A.B. 98 Gen. Assemb., 2023-2024 Reg. Sess., ch. 931, § (1) (Cal. 2024).

54. Cal. Gov’t Code § 65098.4, 65098.5(a) (West).

55. See generally U.S. COAST GUARD CYBER COMMAND, 2023 CYBER TRENDS AND INSIGHTS IN THE MARINE ENVIRONMENT 7 (Apr. 12, 2024), https://www.uscg.mil/Portals/0/Images/cyber/CTIME_2023_FINAL.pdf [<https://perma.cc/GE9U-UZX3>].

56. *Id.* at 6.

57. *Id.*

58. *Id.* at 29-30.

59. Exec. Order No. 14116, 89 Fed. Reg. 13971 (Feb. 26, 2024).

with the protection and security of vessels, harbors, and waterfront facilities.⁶⁰ The amendments expand 33 C.F.R. Part 6 to cover many aspects of maritime cybersecurity, including applicable reporting requirements.⁶¹

Concurrent with the Executive Order, the Coast Guard released Navigation and Vessel Inspection Circular (NVIC) Number 02-24.⁶² Through NVIC 02-24, the Coast Guard sought to clarify the overlap between Marine Transportation Security Act (MTSA) reporting requirements and those created by the Executive Order.⁶³ NVIC 02-24 reinforces that MTSA-regulated entities are required to report activities which may result in a Transportation Security Incident to the National Response Center.⁶⁴ The Coast Guard addressed the added vulnerabilities brought on by the expanded use of internet-connected technologies,⁶⁵ stating that “[m]aintaining the security of these systems, including reporting cyber incidents, is vital to maintaining the security of the [marine transportation system].”⁶⁶

On February 22, 2024, one day after President Biden’s Executive Order, the Coast Guard issued a notice of proposed rulemaking to bolster cybersecurity regulations.⁶⁷ The new rules would address cybersecurity through the addition of subpart F to the general maritime security provisions in 33 C.F.R. part 101.⁶⁸ The proposed rules would apply “to the owners and operators of U.S.-flagged vessel . . . U.S. facilities . . . and outer continental shelf (OCS)” already governed by security regulations in 33 CFR parts 104, 105, and 106.⁶⁹ But they would not apply to any “foreign-flagged vessels subject to 33 C.F.R. part 104.”⁷⁰

The proposed rules place several responsibilities on owners and operators of subject entities.⁷¹ They would ensure the development, approval, and maintenance of a cybersecurity plan as well as a cyber incident response plan.⁷² The plan would have to address the ways in which the subject entity will comply with subpart F and may be incorporated into a vessel security plan (VSP) or facility security plan (FSP).⁷³ The proposed regulations put forward fourteen required sections, many of which are similar to those included in a VSP or FSP.⁷⁴ The amendment process is also

60. *Id.*

61. *Id.*

62. U.S. COAST GUARD, NAVIGATION AND VESSEL INSPECTION CIRCULAR NO. 02-24 (2024), https://www.uscg.mil/Portals/0/Images/cyber/BOS_SA_Cyber%20Reporting%20NVIC.pdf [<https://perma.cc/F4E8-CC48>] [hereinafter NVIC 02-24].

63. *Id.* at 3.b.

64. *Id.* at 5.a.

65. NVIC 02-24, *supra* note 62, at 5.c; U.S. COAST GUARD CYBER COMMAND, *supra* note 55, at 6.

66. NVIC 02-24, *supra* note 62, at 5.c.

67. Cybersecurity in the Marine Transportation System, 89 Fed. Reg. 13404 (proposed Feb. 22, 2024) (to be codified at 33 C.F.R. pt. 101 subpt. F).

68. *Id.* at 13508.

69. *Id.*

70. *Id.*

71. *Id.* at 13510.

72. *Id.*

73. Cybersecurity in the Marine Transportation System, 89 Fed. Reg. at 13510.

74. *Id.* at 13510–11; 33 C.F.R. §§ 104.405, 105.405 (2024).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

104 THE YEAR IN REVIEW

[VOL. 59]

largely modeled after VSPs and FSPs.⁷⁵ The proposed rules outline specific requirements for annual audits as well as circumstantial audits.⁷⁶ During the second annual audit following the final rule, subject entities will be required to submit a cybersecurity plan to the Coast Guard for approval.⁷⁷ The owner or operator is responsible for compliance with the cybersecurity plan⁷⁸ and ensuring that all cyber incidents are properly reported.⁷⁹

The owner or operator would also be required to establish an organizational structure within the cybersecurity plan.⁸⁰ This includes the designation of a cybersecurity officer (CySO) accessible at any time by the Coast Guard.⁸¹ The designated CySO would be required to perform duties similar to those of a Facility Security Officer under Subpart B.⁸² Among other duties, the CySO would be responsible for such things as: ensuring that the cybersecurity assessment, annual audits, and required trainings are conducted; ensuring proper recording and reporting of cyber threats and suspicious activity; and maintaining the cybersecurity plan.⁸³ To qualify as a CySO, the appointed individual must possess general knowledge of maritime cybersecurity.⁸⁴ The CySO needs to be familiar with the measures implemented by the subject entity as well as its cybersecurity plan.⁸⁵ They are also expected to have sufficient knowledge of aspects such as cybersecurity equipment, handling sensitive security information, threat patterns, and training techniques.⁸⁶

The cybersecurity plan and the abilities of the CySO will be tested through drills and exercises.⁸⁷ The requirements of such drills and exercises are similar to those already conducted for vessel and facility security.⁸⁸ The proposed rules require a drill every three months and a calendar-year exercise with not more than eighteen months between exercises.⁸⁹

Perhaps the most significant additions to the proposed regulations are those outlining specific required cybersecurity measures.⁹⁰ First, they outline account security measures including, among others: automatic account lockout, minimum

75. Cybersecurity in the Marine Transportation System, 89 Fed. Reg. at 13511; 33 C.F.R. §§ 104.415, 105.415 (2024).

76. Cybersecurity in the Marine Transportation System, 89 Fed. Reg. at 13511.

77. *Id.* at 13513.

78. *Id.* at 13510.

79. *Id.*

80. *Id.*

81. *Id.*

82. Compare Cybersecurity in the Marine Transportation System, 89 Fed. Reg. at 13511 with 33 C.F.R. § 105.205(c) (2024).

83. Cybersecurity in the Marine Transportation System, 89 Fed. Reg. at 13510.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.* at 13511.

88. Compare Cybersecurity in the Marine Transportation System, 89 Fed. Reg. at 13511–12 with 33 C.F.R. §§ 104.230, 105.220 (2024).

89. Cybersecurity in the Marine Transportation System, 89 Fed. Reg. at 13511–12.

90. *Id.* at 13512–13.

password strength, multifactor authentication, and credential maintenance.⁹¹ Device security measures are also proposed, including maintaining a system inventory and a network map, and outlining the steps required to ensure proper application management.⁹² The proposed rules also require limited-access data logs and encryption of all data.⁹³ Separate training requirements are to be provided for all personnel with access to technology systems and for key personnel with access.⁹⁴ Proposed risk mitigation requirements include penetration testing, system maintenance, and a cybersecurity assessment due within one year after the final rule and, after that, annually.⁹⁵ The proposed rules also outline necessary steps to reduce vulnerabilities in the supply chain.⁹⁶ Resiliency steps are also outlined, including drills, annual reviews, and backups.⁹⁷ The final cybersecurity measures required involve network segmentation and physical security measures.⁹⁸

In concluding its report, Coast Guard Cyber Command urged that “securing our critical infrastructure is imperative.”⁹⁹ It is clear that the regulators are looking to secure and protect the nation’s marine transportation system.¹⁰⁰ The new proposed regulations, and the recent Executive Order, have both signaled the path forward.¹⁰¹ As the regulatory structure begins to shift, it is important to remain up to date with any changes.

IV. United States Trade Representative Response to Complaints of Chinese Monopolization of the Shipbuilding, Maritime, and Logistics Industries

For the past several decades, China has been able to dramatically enhance its shipbuilding industry, while the U.S.’s capacity for production has significantly waned.¹⁰² In response to these developments, several prominent unions and other concerned parties have petitioned the Office of the United States Trade Representative (USTR) for relief.¹⁰³ The petitioners assert that they are interested

91. *Id.* at 13512.

92. *Id.*

93. *Id.*

94. *Id.*

95. Cybersecurity in the Marine Transportation System, 89 Fed. Reg. at 13513.

96. *Id.*

97. *Id.*

98. *Id.*

99. U.S. COAST GUARD CYBER COMMAND, *supra* note 55, at 47.

100. *Id.*

101. U.S. Coast Guard, *Executive Order Expands Coast Guard Authorities to Address Maritime Cyber Threats*, COAST GUARD MARITIME COMMONS (Feb. 22, 2024), <https://www.news.uscg.mil/maritimecommons/Article/3683564/executive-orderexpands-coast-guard-authorities-to-address-maritime-cyber-threa/> [https://perma.cc/EW7M-FJRC].

102. JOHN FRITTELLI, CONG. RSCH. SERV., IF12534, U.S. COMMERCIAL SHIPBUILDING IN A GLOBAL CONTEXT 1 (2023), <https://crsreports.congress.gov/product/pdf/IF/IF12534> [https://perma.cc/GXL8-GK9M].

103. See generally UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION ET AL.,

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

106 THE YEAR IN REVIEW

[VOL. 59]

parties under Section 301 of the Trade Act of 1974¹⁰⁴ as they “have significant interests affected by China’s unreasonable and discriminatory policies that burden or restrict U.S. commerce.”¹⁰⁵ The relief they seek includes sanctions and policies that work to increase the costs associated with the use of Chinese ships and other maritime equipment, as well as bolstering American production of similar goods.¹⁰⁶ Specifically, the affected American parties wish to implore the USTR to utilize Section 301 to “impose tariffs, . . . fees and other restrictions, as well as take all other appropriate and feasible action within the power of the President.”¹⁰⁷ In doing so, the parties hope to mitigate the growth of the Chinese maritime industry in such a way that allows the United States to reassert itself as a preeminent force in shipbuilding and transportation.¹⁰⁸

The USTR responded to the petitioners’ request by announcing it was launching an investigation into the practices and procedures of the Chinese maritime industry pursuant to its Section 301 authority.¹⁰⁹ Specifically, it will utilize its authority under section 301(b) to investigate whether “unreasonable or discriminatory” procedures have been implemented that “burden or restrict U.S. commerce.”¹¹⁰ The USTR demonstrates that Section 301(d)(3)(A) of the Trade Act of 1974 holds that the act of a foreign entity does not have to be in violation of, or even incongruent with, the rights of the United States internationally to be deemed “unfair and inequitable” by the USTR.¹¹¹ Thus the burden of the investigation itself is centered, not upon standing international trade agreements but rather on how the actions of the Chinese maritime industry have impeded or harmed the commerce of the United States.¹¹² While the recommendations of the USTR following this investigation are yet to be determined,¹¹³ the USTR has been taking concurrent steps to bolster the American Maritime industry as described below.¹¹⁴

The USTR has recently announced a Presidential Memorandum, on the basis of a 301 investigation which commenced in 2017, into the economic practices and

PETITION FOR RELIEF UNDER SECTION 301 OF THE TRADE ACT OF 1974, AS AMENDED, CHINA’S POLICIES IN THE MARITIME, LOGISTICS, AND SHIPBUILDING SECTOR (Mar. 12, 2024), <https://ustr.gov/sites/default/files/Section%20301%20Petition%20-%20Maritime%20Logistics%20and%20Shipbuilding%20Sector.pdf> [<https://perma.cc/552B-YHBN>] [hereinafter PETITION FOR RELIEF].

104. *Id.* at 8.

105. *See id.*

106. *Id.* at 7.

107. *Id.*

108. *See id.* at 7–8.

109. *See* Initiation of Section 301 Investigation: China’s Acts, Policies, and Practices Targeting the Maritime, Logistics, and Shipbuilding Sectors for Dominance, 89 Fed. Reg. 29424 (Apr. 22, 2024).

110. *Id.* (referencing Section 301(b)(1) of the Trade Act of 1974).

111. *Id.*

112. *See generally id.* at 29425.

113. *Id.*

114. Notice of Modification: China’s Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation, 89 Fed. Reg. 76581 (Sept. 18, 2024).

policies of the Government of China.¹¹⁵ This Memorandum instructed the USTR to “to increase section 301 ad valorem rates of duty’ for certain specified products of China.”¹¹⁶ Of specific note to the American Maritime and Transportation industries is an increased tariff on ship-to-shore cranes, with the rate increasing to twenty-five percent in 2024.¹¹⁷ Under this Presidential directive, the USTR proposed an increase in tariffs for three types of ship-to-shore cranes: transporter cranes, gantry cranes, and bridge cranes.¹¹⁸ Commenters responded by raising the issue that because the lead time for purchasing these types of cranes is often more than two years, an increase in the rate of tariffs will increase the cost for the purchase of cranes contracted before the proposed increase.¹¹⁹ Furthermore, the commenters asserted that these increases would not be effective in counteracting the policies of the Government of China.¹²⁰ In response to these concerns, the USTR decided to modify its original tariff plan by allowing an exclusion for “cranes that fulfill contracts executed prior to May 14, 2024.”¹²¹ Cranes eligible for the tariff exclusion must enter the United States by May 14, 2026.¹²² In addition, ship-to-shore gantry cranes are exempt only if: (1) they are fulfilling, in whole or in part, a contract executed before May 14, 2024, “for goods that are entered for consumption, or withdrawn from warehouse for consumption, in the United States prior to May 14, 2026,”¹²³ and (2) the importer completes the certification included in Annex D of this Register,¹²⁴ and provides the completed certification to the U.S. Customs and Border Protection.¹²⁵ This certification acts to ensure the date of delivery within the two-year exception window, as well as ensure that the delivery date of the contract was modified with regard to the delivery date after May 14, 2024.¹²⁶ The completed certification must be included in the “importer’s electronic entry summary . . . by uploading it to the Document Imaging System in the Automated Commercial Environment.”¹²⁷ These exclusions are intended by the USTR to appropriately balance the directives of the President as articulated in the President’s Memorandum and mitigate the potential negative effects on the economy of the United States by the imposition of increased tariffs on ship-to-shore cranes.¹²⁸

115. *Id.* at 76582.

116. *Id.*

117. *Id.* at 76583.

118. *Id.* at 76588.

119. *Id.*

120. Notice of Modification: China’s Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation, 89 Fed. Reg. at 76588.

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.* at 76609 (the Importer Certification can be found in Annex D).

125. Notice of Modification: China’s Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation, 89 Fed. Reg. at 76581.

126. *Id.* at 76609 (Annex D—Importer Certification).

127. *Id.* at 76588.

128. *Id.*

V. Source Taxation Changes for International Air and Sea Transportation Income Under the United Nations Model Tax Convention

The right of a country to impose income tax on the earnings from international transportation under treaties has, overall, been uniform since the first international tax conventions that addressed the subject.¹²⁹ The general rule of residence-based taxation for international transportation was adopted by the League of Nations in the 1925 resolutions.¹³⁰ Although the 1927 Model Convention did not address shipping and aviation¹³¹ in a separate article, the experts considered that neither was taxable in any state in which the enterprise did not have a permanent establishment, thereby eliminating, at least under the convention, source-based taxation.¹³²

In later versions of the United Nations Model Convention, the taxation of international shipping and aviation income was addressed in a separate article (through 1980, Article 8).¹³³ The Organization for Economic Cooperation and Development Model Tax Convention on Income and Capital has also provided residence-only taxation since the adoption of the 1963 Draft Double Taxation Convention on Income and Capital despite modification in 2017.¹³⁴

But in 1980, the United Nations Model added source-taxation as alternative B to Article 8 and redesignated existing Article 8 as Alternative A.¹³⁵ Alternative B permits taxation by the source state only where “the shipping activities arising from such operation in the other Contracting State are more than casual.”¹³⁶ This change was to accommodate the desire of developing countries to tax outbound freight, in part considering the payment for these services, primarily occurring on the high seas, as base-eroding payments.¹³⁷ Generally, the taxes to which Alternative B may apply are referred to as freight taxes although, where they exist, they are

129. Guglielmo Maisto, *The History of Article 8 of the OECD Model Treaty on Taxation of Shipping and Air Transport* 31 INTERTAX 232, 234 (2003).

130. SUNITA JOGAJARAN, *DOUBLE TAXATION AND THE LEAGUE OF NATIONS* 45 (Peter Harris ed., Cambridge Univ. Press ed. 2018).

131. *Reps. Presented by the Comm. Of Tech.l Experts on Double Tax'n and Tax Evasion*, League of Nations Doc. C.216M.85 1927 II art. 10 (1927).

132. *Id.* at art. 5, ¶ 3.

133. See generally U.N. Dep't of Econ. & Soc. Affairs, *Model Double Tax'n Convention Between Developed and Developing Countries*, U.N. Doc. ST/ESA/378, at 16–17 (2021) [hereinafter U.N. Model Tax Convention].

134. See generally OECD Ctr. for Tax Pol'y and Admin., *Model Tax Convention on Income and on Capital (Full Version)*, at art. 8 (2019).

135. See U.N. Model Tax Convention, *supra* note 133, at 4.

136. U.N. Dep't of Int'l Econ. & Soc. Affairs, *U.N. Model Double Taxation Convention Between Developed and Developing Countries*, U.N. Doc. ST/ESA/PAD/SER.E/213, at 18 (2017).

137. Comm. of Experts on Int'l Coop. in Tax Matters, *Twenty-Ninth Session Co-Coordinator's Rep.*, U.N. Doc. E/C.18/2024/CRP.29, at 3–5 (Sept. 30, 2024).

equally applicable to passenger transport.¹³⁸ Most often, these taxes deem a percentage of outbound revenue as income subject to tax.¹³⁹

There are significant points to be considered. The general residence-only taxation of United Nations Model Tax Convention Alternative A and Article 8 of the OECD Model apply to international shipping and air transport income.¹⁴⁰ United Nations Model Tax Convention Article 8, Alternative B applies only to international shipping income.¹⁴¹ Thus, before 2025, there was no model treaty provision for countries to adopt that would subject international air transport to source taxation.¹⁴² Also, the historical order of the Alternatives reflects their relative adoption. United Nations Model Convention Article 8, Alternative A is incorporated in more than 3,500 bilateral tax conventions and Article 8, Alternative B (or some similar variation permitting source-based taxation) is present only in 266.¹⁴³

A. 2024 MODEL CONVENTION CHANGES TO ARTICLE 8

At its October 15–18, 2024 meeting, the Committee of Experts on International Cooperation in Tax Matters concluded its ongoing discussion of Article 8 and made significant changes to the United Nations Model Tax Convention.¹⁴⁴ The first change reversed the priority of the alternatives, making the general rule of Alternative A the secondary rule, and labeling it Alternative B.¹⁴⁵ Consequently, source-state taxation is presented as the primary alternative, despite its extensive incorporation into bilateral treaties and the use of Alternative B being relatively inconsequential.¹⁴⁶ The committee materials contain no technical discussion of the change but note only that it was “the preference of a majority of the Committee.”¹⁴⁷

Second, international aviation is now included within the scope of the source-based taxation under the model convention.¹⁴⁸ Thus, countries adopting the

138. *Id.* at 3.

139. *Id.* See e.g., Income Tax Assessment Act 1936 s 129 (Austl.) (deeming five percent of outbound freight as taxable income subject to tax at the statutory rate of thirty percent, making the effective tax rate approximately 1.5 percent of gross outbound charges).

140. Twenty-Ninth Session Co-Coordinator’s Rep., U.N. Doc. E/C.18/2024/CRP.29, at 6–7 (2024).

141. *Id.* at 4.

142. See *id.*

143. Bob Michael & Tatiana Falcão, *Taxing Profits from International Maritime Shipping in Africa: Past, Present and Future UN Model Article 8 (Alternative B)* 8, 25 (Inst. Dev. Studs., Working Paper No. 133, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4193094 [<https://perma.cc/4J58-D5QR>].

144. Twenty-Ninth Session Co-Coordinator’s Rep., U.N. Doc. E/C.18/2024/CRP.29, at 3–5 (2024).

145. See *id.* at 6.

146. See *id.*

147. *Id.* at 5.

148. *Id.* at 6.

source-based taxation rule from the model, now have the option to extend it to international aviation in addition to shipping.¹⁴⁹

Finally, the calculation of the tax permitted under the model has been changed to the lesser of fifty percent of the tax otherwise payable or a percentage to be negotiated on the gross amount of payments made for transport arising in the contracting state.¹⁵⁰

B. WHAT MAY BE THE IMPACT?

While the Committee of Experts on International Tax Cooperation continues its work on the United Nations Model Tax Convention on Income and Capital (and other matters), the United Nations General Assembly established an ad hoc intergovernmental committee to draft terms of reference for a United Nations convention on international tax cooperation.¹⁵¹ The terms of reference for the contemplated multilateral tax convention were released in August.¹⁵²

When the ad hoc committee begins the detailed drafting of the treaty provisions, if it addresses shipping and air transport, those discussions will begin with the existing United Nations Model Tax Convention which now has source taxation as the primary provision and residence taxation as secondary.¹⁵³ Reestablishing the generally used rule of residence taxation as the primary alternative may be challenging.

Another issue that may become more prevalent is the “sword or shield” view of income tax treaties. In most jurisdictions, a tax treaty creates exceptions to the statutory law of the signatory jurisdictions. That is, if Jurisdiction A and B are parties to a bilateral tax convention and Jurisdiction A does not tax, for example, royalties, and the treaty provides a maximum tax rate on royalties of ten percent, no tax is imposed on by Jurisdiction A on royalties from Jurisdiction A residents received by Jurisdiction B residents. The exemption arises under Jurisdiction A domestic law, and because no taxation is less than ten percent under the treaty, the domestic law will apply. Conversely, if Jurisdiction B applies a general tax rate of twenty percent on royalties, the treaty limits taxation to ten percent. This is the shield—or defensive—view of tax treaties.

If, however, Jurisdiction A claims that the treaty permits a ten percent tax rate on royalties received by Jurisdiction B residents and assesses tax on the basis that the convention creates an independent taxing right in addition to those granted

149. *Id.* at 2.

150. U.N. Model Tax Convention, *supra* note 133, at 2.

151. G.A. Res. 78/230, ¶ 6 (Dec. 22, 2023).

152. Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation: Second Session, Chair’s Proposal for Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation, U.N. Doc. A/AC.295/2024/L.4 (Aug. 15, 2024).

153. U.N. Model Tax Convention, *supra* note 133, at 16–17.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

TRANSPORTATION 111

under domestic law, this is an application of the sword—or offensive—view of tax treaties.¹⁵⁴

Notably, most jurisdictions do not impose freight taxes within the scope of (now) Alternative A.¹⁵⁵ Few, if any, jurisdictions impose a similar tax on international air transport.¹⁵⁶ Based on the committee of experts' discussion of these changes over time, it appears that advocates of the changes adopted would strongly favor the establishment of a new taxing right under the convention.¹⁵⁷

154. See AUSTRALIAN TAXATION OFFICE, *Income Tax: Interpreting Australia's Double Tax Agreements 2020*, at 3–4 (TR 2001/13) (Austl.).

155. See PITAMBAR DAS, SMRITI KRISHNIA & AJANTA SINGH, *IBFD INTERNATIONAL TAX STUDIES: TAXATION OF INCOME OF INTERNATIONAL TRANSPORTATION UNDER THE TAX TREATY FRAMEWORK: AN UNDESIRABLE COMPROMISE FOR THE SOURCE COUNTRIES?* 7-2023 (2023).

156. See *id.*

157. See DAS, KRISHNIA & SINGH, *supra* note 155; Bob Michel & Tatiana Falcão, *The New U.N. Tax Committee's Agenda: A Look Ahead*, 104 *TNI* 565, 568-9 (2021); Muhammad Asfaq Ahmed, *UN MTC Article 8: Was the Source Rule Surrender on Article 8 a Blunder? The Case Study of Pakistan* 48 *INTERTAX* 103 (2020).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

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International Antitrust

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This Article outlines the most significant developments in international antitrust in 2024 in twelve jurisdictions.

I. Argentina

Authors: Miguel del Pino, Santiago del Rio, Pilar Moreyra, Marval, O'Farrell, Mairal

A. LEGISLATIVE DEVELOPMENTS

On May 28, 2024, by means of Resolution No. 98, the Secretary of Trade approved the *Regulation for the Implementation of the Leniency Program*, submitted by the Comisión Nacional de Defensa de la Competencia (CNDC) after public consultation.¹ This Program provides for full immunity or reduction of sanctions pursuant to the Antitrust Law, based on a “race-to-the-door” system.²

1. Ministerio De Economía, Secretaría De Comercio [Ministry of Economy, Secretary of Commerce] Resolución 905/2023 (Arg.) (May 16, 2023), <https://servicios.infoleg.gob.ar/infolegInternet/anexos/380000-384999/383980/norma.htm> [<https://perma.cc/2TXG-X8Q4>]; Law No. 27.442, May 05, 2018, *Regulation for the Leniency Programme Implementation* (Arg.), https://www.argentina.gob.ar/sites/default/files/reglamento_de_clemencia_proposed_regulation_eng_0.pdf [<https://perma.cc/X4NY-MT49>].

2. *Regulation for the Leniency Programme, Implementation*, *supra* note 1, at ch. VII.

B. MERGERS

In 2024, a total of forty-seven transactions were notified and, as of January 2024, the CNDC has unconditionally approved sixty-nine transactions.³ Since 2020, the CNDC has issued eight Statements of Objections, of which six have concluded, the latest being Avon/Natura.⁴

1. *Avon / Natura*

This transaction consisted of the acquisition of the sole control over Avon by Natura.⁵ The Secretary of Trade imposed behavioural remedies on the transaction, for a period of three years, including the (i) prohibition of exclusivity clauses in contracts with tollers, suppliers, and resellers, and (ii) an obligation to ensure the individual offer of products that are usually offered in kits, intended to mitigate entry barriers and portfolio effects.⁶

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

In January 2024, the CNDC started an investigation of alleged cartelization between prepaid medicine companies due to a coordinated increase in prices of medicine plans.⁷ As a result, an interim measure was issued ordering the companies, the Argentine Health Union, and its president to readjust prices monthly in line with the Consumer Price Index.⁸

D. DOMINANCE

In 2022, an investigation was initiated by a complaint filed by the Argentine Chamber of Internet against Tele Red Imagen S.A. for allegedly refusing to provide the TyC Sports signal to companies associated with the Chamber since June 2019.⁹ In May 2024, the CNDC issued an opinion advising the Secretary of Trade to issue an interim measure requiring Tele Red to provide the sports signal and sports event for which it holds exclusive broadcasting rights to these companies.¹⁰

3. See generally *id.*

4. See *id.*

5. Poder Ejecutivo Nacional [National Executive Branch], Resolución-2024-362-APN-SIYC#MEC (2024), Law No. 27.442 (Arg.), https://www.argentina.gob.ar/sites/default/files/2024/10/conc173914b_-_reso_y_dictamen_2.pdf [<https://perma.cc/4T3G-K5LZ>].

6. *Id.* at 47.

7. Poder Ejecutivo Nacional [National Executive Branch], Resolución-2024-1-APN-SIYC#MEC (2024), Law No. 27.442 (Arg.), https://www.argentina.gob.ar/sites/default/files/2024/04/resolucion_y_dictamen_0.pdf [<https://perma.cc/AU5J-5EC2>].

8. See *id.* art. 1.

9. Poder Ejecutivo Nacional [National Executive Branch], Opinion on EX-2022-120771883-APN-DGD#MDP, Law No. 27.442, at (1)-(4) (Arg.), https://www.argentina.gob.ar/sites/default/files/2024/05/dictamen_y_reso_-_c1810.pdf [<https://perma.cc/R6WM-F7DF>].

10. *Id.* at para. 86.

E. KEY COURT CASES

1. *FEHGRA / SADAIC: Leading Case on Abusive Pricing is Reversed*

In February 2023, the Supreme Court of Justice deemed inadmissible the extraordinary appeal filed by the National Ministry of Production and Labor, granting res judicata status to the decision of the Federal Civil and Commercial Court revoking the economic sanction imposed to the “Sociedad de Autores y Compositores de Música,” for the alleged anticompetitive conduct of abusive pricing.¹¹

The Court’s judgment affirmed by the Supreme Court stands as a relevant precedent in the legal figure of abusive pricing within Argentine jurisprudence because it puts an end to the leading case in the matter by revoking the only sanction for abusive pricing that has been imposed by the authority.¹²

2. *Digital Payments Market*

A complaint was filed before CNDC on the grounds that the restriction from major credit card brands that prevents Fintech companies from processing payments in the context of cross-border transactions entails an abuse of dominance.¹³ In October 2023, the CNDC imposed an interim measure against Visa, Prisma Medios de Pago, and First Data Cono Sur, which Visa appealed in January 2024;¹⁴ the Court dismissed the appeal and affirmed the interim measure.¹⁵

II. Australia

Authors: Jacqueline Downes, Roy Chowdhury and Carmen Massey, Allens

A. LEGISLATIVE DEVELOPMENTS

On October 10, 2024, the Government introduced a bill to Parliament that, if passed, will overhaul Australia’s existing informal merger clearance regime, establishing a single mandatory and suspensory administrative merger regime (the New Regime), effective for deals closed on or after January 1, 2026.¹⁶

11. Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 23/02/2023, Federación Empresaria Hotelera Gastronómica de la República Argentina c. SADAIC y otro s/ apel. Resol. Comisión Nac. Defensa de la Compet. (Arg.).

12. See generally *id.*

13. Sala I del Tribunal Federal en lo Civil y Comercial [Chamber I of the Federal Civil and Commercial Court], 09/2024, VISA International Service Association y otro c/ Estado Nacional Ministerio de Economía Secretaría de Industria y Desarrollo Productivo CNDC s/ Apel Resol Comisión Nac Ddefensa de La Compet (3951/24/CA1) (Arg.) at (1).

14. *Id.* at (2).

15. *Id.* at (13).

16. Treasury Laws Amendment (Mergers and Acquisition Reform) Bill 2024 (Cth) (Austl.).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

116 THE YEAR IN REVIEW

[VOL. 59]

The Government is also considering a prohibition on post-termination worker restraints of trade, no-poach, and wage fixing agreements.¹⁷

B. MERGERS

1. Under the Proposed New Regime

Thresholds: Transactions must be notified where they meet certain monetary thresholds and the target has a “material connection to Australia,” or the transaction is void.¹⁸ To address serial acquisitions, a three-year cumulative threshold will operate.¹⁹ The Treasurer will also have powers to designate certain acquisitions as “high risk,” requiring notification.²⁰

Exemptions: Transactions that do not result in control or a change in control (including going from joint to sole control) are exempt from notification.²¹

Test: Transactions will be assessed against an expanded “substantial lessening of competition” test.²²

In early 2024, the Australian Competition Tribunal set aside the Australian Competition and Consumer Commission’s (ACCC) decision not to grant authorisation for ANZ bank to acquire Suncorp bank, reaching the view that the transaction would not substantially lessen competition and would likely result in net public benefits.²³ The ACCC indicated it would not seek a review of the decision.²⁴

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

In August 2024, the High Court granted the ACCC special leave to appeal the Federal Court’s decision to uphold appeals by a union and a construction company, against a finding that they had reached an anti-competitive boycott arrangement or understanding.²⁵ The appeal will consider whether an “arrangement or

17. AUSTRALIAN GOVERNMENT, NON-COMPETES AND OTHER RESTRAINTS: UNDERSTANDING THE IMPACTS ON JOBS, BUSINESS, AND PRODUCTIVITY 6–42 (Apr. 2024), <https://treasury.gov.au/sites/default/files/2024-04/c2024-514668-issues-paper.pdf> [<https://perma.cc/MZN3-WV2H>].

18. Treasury Laws Amendment, *supra* note 16, at 108–10.

19. *Id.* at 44.

20. *Id.* at 12–13.

21. *Id.* at 79–80.

22. *Id.* at 118.

23. Australian Competition Tribunal, Decision in Applications by Australia and New Zealand Banking Group Limited and Suncorp Group Limited and Suncorp Group Limited, Judgment (Feb. 20, 2024), at 196–208, https://www.judgments.fedcourt.gov.au/judgments/Judgments/tri-bunals/acompt/2024/2024acompt0001#_Ref159287506 [<https://perma.cc/7YR4-P8ZC>].

24. *Id.* at 213.

25. High Court Grants the ACCC Special Leave to Appeal CFMEU/Hutchinson Decision, AUSTL. COMPETITION & CONSUMER COMM’N (Aug. 8, 2024), <https://www.accc.gov.au/media-release/high-court-grants-the-accc-special-leave-to-appeal-cfmeuhutchinson-decision> [<https://perma.cc/4QHZ-HWQJ>].

understanding” requires communication of assent that precedes and is distinct from the conduct that gives effect to the arrangement or understanding.²⁶

In relation to criminal cartel conduct penalties, Bluescope Steel is appealing the highest penalty ever imposed in Australia (AUD 57.5 million),²⁷ while Bingo Industries received the second highest penalty (AUD 30 million).²⁸

D. DOMINANCE

In 2024, the ACCC continued its proceedings against Mastercard alleging a misuse of market power in the supply of debit card acceptance services.²⁹ Epic Games’ private action against Apple and Google in relation to alleged misuse of market power arising from restrictions they impose on app developers concluded in July 2024, and the parties are awaiting judgment.³⁰

III. Brazil

Authors: Milena Mundim and Julia Braga of Lefosse Advogados

A. LEGISLATIVE DEVELOPMENTS

Three draft bills aimed at regulating digital platforms and protecting intellectual property rights remain pending in the Brazilian Congress.³¹ Despite the lack of progress on these proposals, the Ministry of Finance has recently put forward a plan to strengthen the Conselho Administrativo de Defesa Econômica (CADE).³² This plan will empower it to oversee digital platforms, particularly large tech companies,

26. *Australian Competition and Consumer Comm’n v J Hutchinson Pty Ltd Australian Competition and Consumer Commission v Construction, Forestry and Maritime Emp. Union* [2024] FCAFC 18, 37.

27. Sam Matthews, *BlueScope Says it ‘Went Close to the Line,’ but Did Not Breach Cartel Laws*, LAWYERLY (Aug. 26, 2024), <https://www.lawyerly.com.au/bluescope-says-it-did-not-oblige-competers-to-engage-in-price-fixing> [<https://perma.cc/4DDQ-5WRU>].

28. *Criminal Sentences Imposed on Bingo, Aussie Skips and their Former CEOs Daniel Tartak and Emmanuel Roussakis for Skip Bin and Waste Processing Cartel*, AUSTL. COMPETITION & CONSUMER COMM’N (Feb. 23, 2024), <https://www.accc.gov.au/media-release/criminal-sentences-imposed-on-bingo-aussie-skips-and-their-former-ceos-daniel-tartak-and-emmanuel-roussakis-for-skip-bin-and-waste-processing-cartel> [<https://perma.cc/SA45-TSXD>].

29. *Mastercard in Court for Alleged Misuse of Market Power Over Card Payments*, AUSTL. COMPETITION & CONSUMER COMM’N (May 30, 2022), <https://www.accc.gov.au/media-release/mastercard-in-court-for-alleged-misuse-of-market-power-over-card-payments> [<https://perma.cc/3469-VPB2>].

30. Josh Taylor, *Epic Games Takes on Apple and Google in Australia Over Alleged Misuse of Market Power*, GUARDIAN (Mar. 16, 2024), <https://www.theguardian.com/technology/2024/mar/17/epic-games-vs-apple-vs-google-australia-lawsuits-alleged-market-power> [<https://perma.cc/8NLR-YWDG>].

31. Draft Bill No. 2768/2022 at art. 1; Draft Bill No. 2630/2020 at art. 1; Draft Bill No. 2370/2019 at art. 1.

32. *Plataformas Digitais Aspectos econômicos e concorrenciais e recomendações para aprimoramentos regulatórios no Brasil* [Digital Platforms Economic and competitive aspects and recommendations for regulatory improvements in Brazil], MINISTÉRIO DA FAZENDA [MINISTER OF FINANCE] (2024), https://www.gov.br/fazenda/pt-br/central-de-conteudo/publicacoes/apresentacoes/2024/outubro/arquivo/plataformas-digitais-concorrencia_10102024-pptx-1.pdf [<https://perma.cc/NTX8-9J2E>].

as part of a broader effort to address issues of market concentration, competition, and user data protection within Brazil's digital economy.³³

While it is unclear if the government will introduce a new draft bill or amend existing ones,³⁴ these recent initiatives indicate a strong government interest in regulation within the digital sector. The potential new legislation would seek to align with the Ministry's goals, promoting fair competition and preventing monopolistic practices in Brazil's evolving digital landscape.³⁵

B. MERGERS

In 2024,³⁶ CADE has reviewed 569 transactions, with 517 (ninety percent) handled through the fast-track procedure.³⁷ Only two deals were blocked: one involving a drywall plant acquisition, where proposed remedies were deemed inadequate to reduce competitive risks,³⁸ and another due to irregularities and concerns over the accuracy of information provided.³⁹

Seven cases were reassessed by CADE's Tribunal.⁴⁰ Two were cleared with restrictions.⁴¹ CADE handled eleven gun jumping violations, which significantly exceeded the previous year's numbers.⁴² Additionally, a new precedent emerged, establishing a cap on gun-jumping fines at twenty percent of the transaction value in cases of good-faith violations.⁴³ When the transaction value is low, other aspects may be used to determine the fine amount.⁴⁴

Finally, in 2024 CADE released the Non-Horizontal Merger Guidelines, drawing inspiration from the European Commission and aligning with antitrust initiatives

33. See *id.*

34. See *id.*

35. See *id.*

36. *Cade Em Números* [CADE in Numbers], CONSELHO ADMINISTRATIVO DE DEFESA ECONÔMICA [ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENSE], <https://cadenumeros.cade.gov.br/QvAJAXZfc/opendoc.htm?document=Painel%2FCADE%20em%20N%C3%BAmoros.qvw&host=QVS%40srv004q6774&anonymous=true> [https://perma.cc/93MC-E8DU] (last visited Apr. 10, 2025).

37. *Id.*

38. CADE No. 08700.003985/2023-44, Relator: Victor Oliveira Fernandes, 23.04.2024 (Braz.).

39. CADE No. 08700.004023/2024-93, Relator: Conselheira Camila Cabral Pires Alves, 25.09.2024 (Braz.).

40. See *CADE By the Numbers* (CADE em Números), CADE, <https://cadenumeros.cade.gov.br/QvAJAXZfc/opendoc.htm?document=Painel%2FCADE%20em%20N%C3%BAmoros.qvw&host=QVS%40srv004q6774&anonymous=true> [https://perma.cc/FUU8-L4W8] (last visited May 7, 2025).

41. *Id.*

42. *Id.*

43. *Merger Control: CADE's Tribunal Rules on Calculating a New Cap for Gun-Jumping Fines*, MATTOS FILHO (Nov. 12, 2024), <https://www.mattosfilho.com.br/en/unico/calculating-gun-jumping-fines> [https://perma.cc/WLM4-VQD4].

44. Such as tangible and intangible assets necessary for the operation of the enterprise, any increase in capital and the nationalized value of global operations.

in other relevant jurisdictions, such as the United States.⁴⁵ The Guidelines aim to address the competitive effects of non-horizontal mergers and reflects CADE's ongoing efforts to refine its merger control practices in line with global antitrust standards.⁴⁶

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

In 2024 so far, CADE has ruled on a total of thirteen anticompetitive proceedings, imposing BRL 136,926,975.85⁴⁷ (or USD 23,616,242.81⁴⁸) in fines, which represents an increase of nineteen percent from 2023. Out of these proceedings, eleven involved cartel investigations and two involved cases aimed at investigating the influence of uniform conduct.⁴⁹

In the last two decades, CADE has signed a total of 113 leniency agreements, an average of five deals each year.⁵⁰ As of the end of November 2024, CADE has signed four leniency agreements, two of them involving anticompetitive practices concerning labor markets.⁵¹

D. DOMINANCE

The Ministry of Finance's recent proposals aim to curb monopolization in digital markets, where network effects and data-driven growth enable dominant players to secure their positions and block competitors.⁵² The Ministry recommends enhancing CADE's authority to oversee these markets and address practices that restrict competition.⁵³

45. CONSELHO ADMINISTRATIVO DE DEFESA ECONÔMICA [ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENSE], *GUIA V+ GUIA DE ANÁLISE DE ATOS DE CONCETRAÇÃO NÃO HORIZONTAIS* [V+ GUIDE, GUIDE TO THE ANALYSIS OF NON-HORIZONTAL MERGERS] 5, 75, (2024), <https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/Guia%20V+/Guia-V-+2024.pdf> [<https://perma.cc/5H6T-2SCF>].

46. *See id.* at 30–32.

47. *Cade Em Números*, *supra* note 36.

48. *Want to Convert Brazilian Reais to US Dollars?*, REVOLUT, <https://www.revolut.com/currency-converter/convert-brl-to-usd-exchange-rate> [<https://perma.cc/2YA8-KX48>] (last visited Apr. 10, 2025) (at the time this paper was written, one U.S. Dollar equaled approximately 5,798 Brazilian Real).

49. *Guia V+ Guia de Análise de Atos de Concentração Não Horizontais*, *supra* note 45.

50. Conselho Administrativo de Defesa Econômica [Administrative Council for Economic Defense], *Estatísticas do Programa de Leniência* [Leniency Program Statistics], GOV.BR (Dec. 9, 2024), <https://www.gov.br/cade/pt-br/assuntos/programa-de-leniencia/estatisticas> [<https://perma.cc/LM9C-ZQWF>].

51. *Id.*

52. Anna Moskal & Marcella Brandão Flores da Cunha, *Brazil's Path Towards Digital Ex Ante Competition Regulation – Remarks on the Brazilian Ministry of Finance 2024 Proposal*, KLUWER COMPETITION L. BLOG (Apr. 4, 2025), <https://competitionlawblog.kluwercompetitionlaw.com/2025/04/04/brazils-path-towards-digital-ex-ante-competition-regulation-remarks-on-the-brazilian-ministry-of-finance-2024-proposal> [<https://perma.cc/8F8G-AMNA>].

53. *Id.*

IV. Canada

Authors: Adam S. Goodman, Simon Kupi, and Camila Maldí

A. LEGISLATIVE DEVELOPMENTS

Discussed below, Bill C-59 brought several amendments to the Competition Act, including: (i) a rebuttable structural presumption; (ii) ability for private parties to seek leave to challenge deceptive marketing and competitor collaborations before the Competition Tribunal (the Tribunal); and (iii) greenwashing provisions requiring testing for environmental claims.

B. MERGERS

The Competition Bureau (the Bureau) approved the purchase of twenty-nine oil-field waste facilities owned by Secure Energy Services (Secure).⁵⁴ The Tribunal had previously ordered the sale of these facilities in its decision on Secure's 2021 acquisition of Tervita Corporation.⁵⁵

The Bureau entered into a consent agreement with Béton Provincial to address concerns with its acquisition of CRH Canada Group Inc.'s concrete operations by requiring the divestiture of a plant and associated assets and employees.⁵⁶

Bell Media Inc. agreed with the Bureau to sell 669 advertising displays to address concerns with the company's acquisition of a rival outdoor advertising supplier.⁵⁷

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

The Bureau obtained a production order in an investigation into Kalibrate Canada's data, pricing, and consultation services to gas station operators.⁵⁸

54. Fall Economic Statement Implementation Act, 2023, C-59, 44th Parl., 1st Sess. (Can.) (assented to June 20, 2024).

55. Competition Bureau Canada, *Competition Bureau Approves Waste Connections as Buyer of 29 Secure Facilities to Resolve Competition Concerns*, GOV'T CAN. (Feb. 4, 2024), <https://www.canada.ca/en/competition-bureau/news/2024/02/competition-bureau-approves-waste-connections-as-buyer-of-29-secure-facilities-to-resolve-competition-concerns.html> [<https://perma.cc/7GGQ-RG3Y>].

56. *Id.*

57. Competition Bureau Canada, *Competition Bureau Reaches Agreement to Protect Competition for Ready-Mix Concrete in Quebec*, GOV'T CAN. (Mar. 26, 2024), <https://www.canada.ca/en/competition-bureau/news/2024/03/competition-bureau-reaches-agreement-to-protect-competition-for-ready-mix-concrete-in-quebec.html> [<https://perma.cc/5ZZN-473J>].

58. Competition Bureau Canada, *Competition Bureau Reaches Agreement with Bell to Protect Competition for Outdoor Advertising in Ontario and Quebec*, GOV'T CAN. (June 10, 2024), <https://www.canada.ca/en/competition-bureau/news/2024/06/competition-bureau-reaches-agreement-with-bell-to-protect-competition-for-outdoor-advertising-in-ontario-and-quebec.html> [<https://perma.cc/KLX6-4EMD>].

D. DOMINANCE

The Bureau entered into a consent agreement with the Yukon Real Estate Association (YREA) in which YREA agreed not to require prospective members to live in Yukon for a year before they could become a member.⁵⁹

The Bureau announced an investigation into Canadian Real Estate Association (CREA) relating to real estate commissions and Multiple Listing Services (MLS) systems.⁶⁰

E. KEY COURT CASES

The Ontario Superior Court of Justice (the ONSC) dismissed a class action alleging that Ticketmaster had misrepresented its intended enforcement of its terms and policies against ticket resellers.⁶¹ The ONSC certified a class action alleging that manufacturers had misrepresented that diesel vehicles included ultra-low emission systems.⁶²

The Federal Court of Appeal heard an appeal regarding the certification of a class action alleging that licensed real estate brokerages control prices for the supply of buyer brokerage services in residential real estate purchases.⁶³ A Canada-wide class action was also brought on virtually identical grounds.⁶⁴

The Tribunal ordered a record penalty of CAD 39 million against Cineplex Inc. for drip pricing by failing to disclose a mandatory online booking fee applicable to ticket sales.⁶⁵ Cineplex has appealed the decision.⁶⁶

The Federal Court stayed a class action alleging drip pricing on the Uber Eats food delivery platform, upholding the validity of Uber's arbitration clause.⁶⁷

59. Competition Bureau Canada, *Competition Bureau Advances an Investigation into Kalibrate's Gas Pricing Services*, GOV'T CAN. (July 24, 2024), <https://www.canada.ca/en/competition-bureau/news/2024/07/competition-bureau-advances-an-investigation-into-kalibrates-gas-pricing-services.html> [https://perma.cc/S8CF-KDXS].

60. Competition Bureau Canada, *Competition Bureau Reaches Agreement to Protect Real Estate Competition in the Yukon*, GOV'T CAN. (Apr. 25, 2024), <https://www.canada.ca/en/competition-bureau/news/2024/04/competition-bureau-reaches-agreement-to-protect-real-estate-competition-in-the-yukon.html> [https://perma.cc/DUR4-32U3].

61. Competition Bureau Canada, *Competition Bureau Advances Investigation into the Canadian Real Estate Association's Policies*, GOV'T CAN. (Oct. 3, 2024), <https://www.canada.ca/en/competition-bureau/news/2024/10/competition-bureau-advances-investigation-into-the-canadian-real-estate-associations-policies.html> [https://perma.cc/FUE2-TUQA].

62. *Thompson-Marcial v. Ticketmaster Canada LP*, 2024 ONSC 2305 (Can.) at ¶ 476.

63. *MacKinnon v. Volkswagen Group Canada Inc.*, 2024 ONSC 4988 (Can.).

64. *Sunderland v. Toronto Regional Real Estate Board*, 2023 FC 1293 (Can.) at ¶ 2.

65. *McFall v. Canadian Real Estate Ass'n*, Toronto T-119-24 (Fed. Ct.) at ¶ 2.

66. *Canada (Commissioner of Competition) v. Cineplex Inc.*, No. CT-2023-003, Information Note (Sept. 23, 2024) (Comp. Trib.), <https://decisions.ct-tc.gc.ca/> [https://perma.cc/4CPB-8F6Z].

67. *Cineplex Appeals Competition Tribunal Decision*, CINEPLEX (Oct. 24, 2024), <https://media-files.cineplex.com/press-releases/Cineplex%20Appeals%20Competition%20Tribunal%20Decision.10%2024%2024.pdf> [https://perma.cc/9AEH-7V7D].

V. China

Authors: Peter Wang and Yizhe Zhang, Jones Day.

A. LEGISLATIVE DEVELOPMENTS

In January 2024, China doubled its previous merger filing thresholds and now requires prior filing to and approval from the Chinese antitrust regulator if at least two parties 1) each have more than CNY 800 million (approximately USD 116 million) in Chinese revenue, and 2) more than CNY 12 billion (approximately USD 74 billion) in combined global revenue or more than CNY 4 billion (approximately USD 580 million) in combined Chinese revenue in the preceding fiscal year.⁶⁸ China also updated its simple filing form, reducing certain information required for Chinese filings.⁶⁹

In June 2024, China's Supreme People's Court (SPC) released a judicial interpretation regarding civil antitrust disputes, lowering the initial hurdles for private antitrust plaintiffs to reach substantive stages of the trial.⁷⁰

B. MERGERS

The State Administration for Market Regulation's (SAMR) merger review continues to focus on semiconductor, healthcare, and advanced manufacturing industries.⁷¹ As of November 13, 2024, SAMR unconditionally approved more than ninety-nine percent of approximately 823 deals it had reviewed and imposed conditions in one transaction.⁷² In *JX Nippon Mining*, the parties manufactured different critical components for flexible printed circuits.⁷³ SAMR imposed conditions requiring the combined parties to refrain from bundling, supply on fair and

68. *Heller v. Uber Technologies Inc.*, 2018 ONSC 718 (CanLII) at ¶ 4.

69. State Administration for Market Regulation (SAMR), *Provisions of the State Council on Notification Thresholds for Concentrations Between Undertakings (2024 Revision)* [国务院关于经营者集中申报标准的规定 [2024年修订], GOV.CN, https://www.gov.cn/zhengce/content/202401/content_6928387.htm [<https://perma.cc/46FQ-C9H4>] (last visited Apr. 8, 2025).

70. State Administration for Market Regulation (SAMR), *Policy Database Entry* [政策库条目], GOV.CN (June 24, 2024), https://www.gov.cn/zhengce/zhengceku/202409/content_6976648.html [<https://perma.cc/R7GH-KVE2>].

71. News Bureau of the Supreme People's Court, *The Supreme Court Issued a New Judicial Interpretation on Antitrust Civil Litigation* [新闻发布], IPC.COURT.GOV.CN (June 6, 2025), <https://ipc.court.gov.cn/zh-cn/news/view-3112.html> [<https://perma.cc/UUC2-4ASY>].

72. Dominic Long et al., *Rising Review Risk for Deals Not Meeting Merger Control Thresholds*, A&O SHERMAN (Feb. 27, 2025), <https://www.aoshearman.com/en/insights/global-trends-in-merger-control-enforcement/rising-review-risk-for-deals-not-meeting-merger-control-thresholds> [<https://perma.cc/C2EQ-X34A>].

73. Hao Zhan & Ying Song, *SAMR Merger Control Statistics in the First Half of 2024*, China L. Vision (Aug. 13, 2024), <https://www.chinalawvision.com/2024/08/competition-law-anti-monopoly-law/samr-merger-control-statistics-in-the-first-half-of-2024/#:~:text=Regarding%20the%20industries%20involved%20in,technology%20services%2C%20transportation%2C%20etc> [<https://perma.cc/8HP9-4LN7>].

reasonable terms to Chinese customers, and maintain interoperability with competitors' products.⁷⁴

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

SAMR's cartel enforcement activities focused on domestic entities.⁷⁵ In 2024, SAMR issued seven penalties against domestic cartels, including three involving the construction industry, three involving automobile services, and one in the public utility sector.⁷⁶

D. DOMINANCE

SAMR and its local branches continued to focus on unilateral conduct in the public utility and pharmaceutical sectors, including unfairly high pricing, exclusive dealing, refusal to deal, and imposing unreasonable trading conditions.⁷⁷ Five out of the six unilateral conduct cases published by SAMR in 2024 involved domestic public utilities, and one related to active pharmaceutical ingredients.⁷⁸

E. KEY COURT CASES

1. *Mr. Jin v. Apple*

The Shanghai Intellectual Property Court dismissed a lawsuit against Apple, where the plaintiff accused Apple of abusing its market position by charging a thirty percent commission on in-app purchases and restricting payment methods.⁷⁹ The Court affirmed Apple's dominant market position but found no abuse of market power, holding that there was no evidence that the higher prices the plaintiff paid for apps were caused by the commission charged by Apple.⁸⁰

74. State Admin. for Mkt. Regul. (SAMR), *Notice of Conditional Approval of JX Nippon's Acquisition of Tatsuta* [关于准予JX日矿收购辰田有条件批准的公告], SAMR.GOV.CN (June 11, 2024), https://www.samr.gov.cn/fldes/tzgg/fjt/art/2024/art_ee026cc074884d50ade381f916ab943a.html [https://perma.cc/GN29-7YKK].

75. *Id.*

76. Qian Xiaoqiang & Yang Yikai, *Cartels 2024*, CHAMBERS & PARTNERS (June 11, 2024), <https://practiceguides.chambers.com/practice-guides/comparison/881/13464/21362-21363-21364-21365-21366-21367> [https://perma.cc/UE46-BWQB].

77. See State Admin. for Mkt. Regul. (SAMR), *Administrative Penalty Cases* [行政处罚案件], SAMR.GOV.CN, <https://www.samr.gov.cn/fldes/tzgg/xzcf/index.html> [https://perma.cc/4EVE-495U] (last visited Apr. 8, 2025).

78. Sébastien Evrard & Katie Cheung, *Antitrust in China – Review and Outlook 2025*, GIBSON DUNN (Mar. 18, 2025), <https://www.gibsondunn.com/antitrust-in-china-review-and-outlook-2025> [https://perma.cc/B59E-ED8E].

79. See SAMR, *supra* note 77.

80. Hu Bei Higher People's Court, (2021) Hu 73 Zhi Min Chu No. 220 [(2021) 鄂73执民初220号], WEIXIN (WECHAT) (June 11, 2024), https://mp.weixin.qq.com/s/knxomLxILvbF1z4OkeeO_w [https://perma.cc/2EL8-E5H5].

2. *Ningbo Ketian etc. v. Hitachi Metals*

The SPC reversed a lower court ruling to hold that the patents owned by Hitachi Metals were non-essential patents and that Hitachi Metals lacked a dominant position in the technology market for its patents to manufacture sintered neodymium iron boron.⁸¹ The decision indicates the Court's restrained approach in applying the essential facility theory to cases that do not involve standard essential patents.⁸²

VI. European Union

A. LEGISLATIVE DEVELOPMENTS

Nearing the end of her second mandate, Executive Vice-President Vestager will very soon cede the leadership of the European Commission's Directorate General for Competition (the EC) to Teresa Ribera.⁸³ Ribera will determine whether to move forward with a proposed revamp of the EC's antitrust procedural rules.⁸⁴ Separately, the EC released draft guidelines on exclusionary abuses, the most significant policy development in single firm conduct enforcement in the past fifteen years.⁸⁵

B. MERGERS⁸⁶

In a landmark ruling, the EU Court of Justice found that the EC did not have the power to review, and therefore to prohibit, Illumina's acquisition of Grail in 2022.⁸⁷ The ruling more generally clarified that the EC lacks jurisdiction to obtain referral of deals that fall below Member States' thresholds.⁸⁸ Ending high-profile in-depth reviews that started in 2023, Amazon abandoned its plans to acquire iRobot, and IAG abandoned its plans to acquire rival airline Air Europa.⁸⁹

81. *Id.*

82. *Hitachi Metals Wins Appeal in Landmark Antitrust Ruling by China's Supreme People's Court*, FTI CONSULTING (2024), <https://www.fticonsulting.com/insights/success-stories/hitachi-metals-wins-appeal-landmark-antitrust-ruling-china-supreme-people-court> [<https://perma.cc/VQX5-4B3B>].

83. *Id.*

84. *Dawn Raid Analysis Quarterly: 2024 Q3*, WHITE & CASE (Feb. 4, 2025), <https://www.whitecase.com/insight-our-thinking/dawn-raid-analysis-quarterly-2024-q3> [<https://perma.cc/47S6-ZMDZ>].

85. Press Release, Eur. Comm'n, Commission Publishes Findings of Evaluation of EU Antitrust Enforcement Framework (Sept. 4, 2024), https://ec.europa.eu/commission/presscorner/detail/en/ip_24_4550 [<https://perma.cc/8SHS-AV4Z>].

86. Press Release, Eur. Comm'n, Commission Seeks Feedback on Draft Antitrust Guidelines on Exclusionary Abuses (July 31, 2024), https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3623 [<https://perma.cc/97MW-LA7J>].

87. *Mergers*, EUR. COMM'N, https://competition-policy.ec.europa.eu/mergers_en [<https://perma.cc/3R29-7EKF>] (last visited Apr. 7, 2025).

88. Case C-611/22 P, *Illumina, Inc. v. European Commission*, ECLI:EU:C:2024:677, ¶ 112–14 (Sept. 3, 2024).

89. *Id.* at ¶ 121–23, 222.

C. CARTELS & ANTI-COMPETITIVE PRACTICES

As of November 2024, the EC has only imposed fines totaling about €48.7 million (USD 51.4 million), all in respect of a boycott cartel in the rail passenger market, marking the lowest amount of total cartel fines imposed in the past five years.⁹⁰

D. DOMINANCE

In contrast, the EC imposed its highest total fines for single firm conduct in the past five years, amounting to about €3.1 billion (USD 3.3 billion).⁹¹ This principally arises from its enforcement into the tech/digital sector.⁹² The EC imposed an approximately €1.8 billion (USD 1.9 billion) fine on Apple regarding its anti-steering rules for music streaming apps, whilst accepting commitments from the company to resolve its investigation into Apple Pay.⁹³ The EC also imposed an approximately €798 million (USD 841 million) fine on Meta in connection with its Facebook Marketplace service.⁹⁴ In the pharmaceuticals sector, the EC took issues with alleged disparagement (and other) practices, closing an investigation targeting Vifor upon receiving commitments from the company, whilst imposing an approximately €462.6 million (USD 487.8 million) fine on Teva.⁹⁵ These three fining decisions will (likely) be challenged before the EU Courts.

E. KEY COURT CASES

Concluding the *Google Shopping* saga, the EU Court of Justice confirmed that the essential facilities doctrine does not apply to self-preferencing.⁹⁶ In the *Intel* saga, the Court further clarified the role of the “as efficient competitor” test to assess the

90. *Statement Regarding the Termination of Amazon’s Proposed Acquisition of iRobot*, FED. TRADE COMM’N (Jan. 31, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/01/statement-regarding-termination-amazons-proposed-acquisition-irobot> [https://perma.cc/T2D9-EHXV]; see *International Airlines Group Abandons Takeover of Air Europa*, THE EUR. CONSUMER ORG. (Aug. 2024), <https://www.beuc.eu/success-stories/international-airlines-group-abandons-takeover-air-europa#:~:text=On%201%20August%202024%20International,for%20Spanish%20airline%20Air%20Europa> [https://perma.cc/5E65-9AEM].

91. *Cartel Statistics*, EUR. COMM’N (Apr. 2, 2025), https://competition-policy.ec.europa.eu/antitrust-and-cartels/cartels-cases-and-statistics_en [https://perma.cc/7MU5-P8G7].

92. See *Commission Fines Apple Over €1.8 Billion Over Abusive App Store Rules for Music Streaming Providers*, EUR. COMM’N (Mar. 3, 2024), https://ec.europa.eu/commission/presscorner/detail/ga/ip_24_1161 [https://perma.cc/R5XS-7VDQ]; *Commission Fines Meta €797.72 Million Over Abusive Practices Benefitting Facebook Marketplace*, EUR. COMM’N (Nov. 13, 2024), https://ec.europa.eu/commission/presscorner/detail/en/ip_24_5801 [https://perma.cc/E75V-PRPN]; *Commission Fines Teva €462.6 Million Over Misuse of Patent System and Disparagement to Delay Rival Multiple Sclerosis Medicine*, EUR. COMM’N (Oct. 30, 2024), https://ec.europa.eu/commission/presscorner/detail/en/ip_24_5581 [https://perma.cc/48ZG-YQ6V].

93. See EUR. COMM’N, *supra* note 91.

94. See *id.*

95. See EUR. COMM’N, *supra* note 91.

96. *Id.*

foreclosure potential of exclusivity rebates.⁹⁷ In its first ruling on the topic in the past fifteen years, the EU General Court held that predatory pricing does not require the EC to show anti-competitive effects.⁹⁸

VII. India

Authors: Naval Satarawala Copra and Aman Singh Sethi, Shardul Amarchand Mangaldas & Co.

A. LEGISLATIVE DEVELOPMENTS

The Government of India notified amendments to the *Competition Act, 2002*, extensively updating the enforcement, merger control, procedural, and appellate provisions.⁹⁹

The Competition Commission of India (CCI) now has the power to impose penalties on global turnover rather than the earlier relevant turnover standard.¹⁰⁰ The CCI has operationalized a settlement¹⁰¹ and commitment¹⁰² mechanism for vertical agreements and abuse of dominance cases and “leniency plus”¹⁰³ for cartel cases.

The merger control regime has been overhauled, including: (i) introduction of deal value thresholds;¹⁰⁴ (ii) exemptions from notification of certain categories of combinations;¹⁰⁵ (iii) expedited merger review timelines; (iv) expansive definitions of “affiliates” and “control;”¹⁰⁶ and (v) introducing derogation from standstill obligations for on-market transactions.¹⁰⁷

97. Case C-48/22 P, *Google LLC and Alphabet Inc. v. European Commission*, ECLI:EU:C:2024:726, ¶¶ 67, 113–15 (Sept. 10, 2024).

98. Case C-240/22 P, *Intel Corp. v. European Commission*, ECLI:EU:C:2024:915, ¶¶ 14–18 (Oct. 24, 2024).

99. *Qualcomm, Inc. v. European Commission*, Case T-671/19, ECLI:EU:T:2024:626, ¶¶ 520–21 (Sept. 18, 2024).

100. See Anisha Chang et al., *India: Overhaul of Regime Set to Reshape Competition Landscape*, GCR (Apr. 12, 2024), <https://globalcompetitionreview.com/review/the-asia-pacific-antitrust-review/2024/article/india-overhaul-of-regime-set-reshape-competition-landscape> [<https://perma.cc/VZ5Q-WMTS>].

101. Competition Commission of India (Determination of Monetary Penalty) Guidelines, 2024, No. B-14011/1/2024-ATD-II, *Gazette of India*, Ext. Pt. III, Sec. 4 (Mar. 6, 2024).

102. See generally Competition Commission of India (Settlement) Regulations, 2024, CCI/Reg-S.R./2024, *Gazette of India*, Ext. Pt. III, Sec. 4 (Mar. 6, 2024).

103. See generally Competition Commission of India (Commitment) Regulations, 2024, CCI/Reg-C.R./2024, *Gazette of India*, Ext. Pt. III, Sec. 4 (Mar. 6, 2024).

104. See generally Competition Commission of India (Lesser Penalty) Regulations, 2024, No. L-3(4)/Reg-L.P./2023-24, *Gazette of India*, Ext. Pt. III, Sec. 4 (Feb. 20, 2024).

105. See Competition Commission of India (Combinations) Regulations, 2024, CCI/CD/Comb. Regl./2024, *Gazette of India*, Ext. Pt. III, Sec. 4, reg. 4(1), (2)(a) (Sept. 9, 2024).

106. Competition (Criteria of Combination) Rules, 2024, G.S.R. 548(E), *Gazette of India*, Ext. Pt. II, Sec. 3(i), rules 3(1)–(2)(a)–(b) (Sept. 9, 2024).

107. Competition Commission of India (Combinations) Regulations, 2024, CCI/CD/Comb. Regl./2024, *Gazette of India*, Ext. Pt. III, Sec. 4, reg. 6 (Sept. 9, 2024).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

ANTITRUST 127

The Committee on Digital Competition Law published a draft *Digital Competition Bill*, introducing a separate ex-ante law for regulating digital markets.¹⁰⁸ After receiving significant resistance from industry, the draft bill has been put on hold.¹⁰⁹ Separately, the CCI has initiated a market study on “Artificial Intelligence and Competition.”¹¹⁰

B. MERGERS

The CCI has been aggressive on parties undertaking adequate due diligence in overlaps assessment, including disclosing complementary relationships, even with portfolio companies and affiliates.¹¹¹

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

The National Company Law Appellate Tribunal (NCLAT) upheld the CCI’s 2022 order penalizing Delicasy for market sharing and bid rigging through submission of cover bids.¹¹² The NCLAT agreed with the CCI, basing the penalty on total rather than relevant turnover.¹¹³

The CCI reversed its 2018 contravention decision against ethanol producers, concluding they had not engaged in price fixing and bid rigging.¹¹⁴

D. DOMINANCE

The CCI prima facie found Google’s Play Store payments policies to be discriminatory and the fee to be excessive, directing an investigation.¹¹⁵ The CCI did not stay the policies pending investigation.¹¹⁶

108. PRS Legislative Research, *Committee Report Summary – Digital Competition Law*, PRS 1, 1 (Mar. 20, 2024).

109. Anandita Singh Mankotia, *After Heartburn and Locked Horns, Digital Competition Bill Pushed to Next Year*, LIVEMINT (Mar. 29, 2024), <https://www.livemint.com/news/india/digital-competition-bill-moca-meity-i-b-parliament-facebook-google-cci-11725782470933.html> [<https://perma.cc/6FE4-9QNQ>].

110. Ministry of Corporate Affairs, *CCI Engages Management Development Institute Society (MDIS) for Market Study on Artificial Intelligence and Competition*, PIB DELHI (Sept. 13, 2024), <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2054673> [<https://perma.cc/79GG-N3CY>].

111. See *Atlas 2022 Holdings Ltd.*, Combination Reg. No. C-2023/10/1059, at 2–6 (CCI Nov. 29, 2023); *V-Sciences Invs. Pte. Ltd.*, Combination Reg. No. C-2023/10/1070, at 2–3 (CCI Dec. 12, 2023).

112. *Delicasy Continental Pvt. Ltd. v. Competition Comm’n of India*, Competition Appeal (AT) No. 32 of 2022, 16 (NCLAT May 31, 2024).

113. *Id.* at 17.

114. *India Glycols Ltd. v. Indian Sugar Mills Ass’n*, Case No. 21 of 2013, Competition Commission of India, ¶ 8 (May 28, 2024).

115. See *Indian Broad. & Dig. Found. v. Alphabet Inc.*, Case Nos. 37 of 2022, 17 of 2023, & 27 of 2023, Competition Commission of India, ¶¶ 11–14 (Mar. 15, 2024).

116. *Id.* ¶ 15.

E. KEY COURT CASES

The Delhi High Court closed a case of abuse of dominance, emphasizing the importance of finality of alternative dispute resolution methods.¹¹⁷ It held that mediated settlements before the CCI should conclusively resolve disputes without the risk of further regulatory scrutiny.¹¹⁸

The Gauhati High Court quashed a 2016 CCI order directing an investigation into alleged cartel activity in the cement sector on the ground that the CCI had failed to establish a reasonable basis of appreciable adverse effect on competition.¹¹⁹

VIII. Japan

Authors: Shigeyoshi Ezaki, Vassili Moussis, Kiyoko Yagami and Azusa Hongo, Anderson Mori & Tomotsune.

A. LEGISLATIVE DEVELOPMENTS

There were no significant legislative developments in the fiscal year ending March 31, 2024 (FY2023), although the Japan Fair Trade Commission (JFTC) has been preparing new legislation on digital markets.¹²⁰ In June 2023, the Digital Market Competition Council,¹²¹ of which the JFTC's chair is a member, completed the final report on the Competition Assessment of the Mobile Ecosystem.¹²² Subsequently, the JFTC carried out a necessary study regarding new legislation on promotion of competition for specified smartphone software.¹²³

B. MERGERS

In FY2023, the JFTC received a total of 345 merger notifications, none of which were brought into a Phase II review and only one of which required remedies.¹²⁴

117. *JCB India Ltd. v. Competition Comm'n of India*, W.P.(C) 2244/2014 & W.P.(CRL) 1823/2016, ¶¶ 17, 56 (Del. High Ct. Aug. 14, 2024).

118. *Id.* ¶¶ 43–45.

119. *Star Cement Ltd. v. Competition Comm'n of India*, W.P.(C) 6343/2018, ¶¶ 45–47 (Gauhati High Ct. Aug. 30, 2024).

120. See Japan Fair Trade Commission, *Annual Report 2023*, 1–2 (FY2023), <https://www.jftc.go.jp/file/summary2023-2024.pdf> [<https://perma.cc/877N-KT3C>].

121. Digital Market Competition Council is established under the Headquarters for Digital Market Competition in the Cabinet.

122. Secretariat of the Headquarters for Digital Market Competition, Cabinet Secretariat, Japan, *Competition Assessment of the Mobile Ecosystem Final Report: Summary* (June 16, 2023), https://www.kantei.go.jp/jp/singi/digitalmarket/pdf_e/documents_230616.pdf [<https://perma.cc/6GWU-4Q6A>].

123. See Japan Fair Trade Commission, *Market Study Report on Mobile OS and Mobile App Distribution*, JFTC (Feb. 9, 2023), <https://www.jftc.go.jp/file/230209EN01.pdf> [<https://perma.cc/BT3L-RN9C>].

124. Japan Fair Trade Commission, *The Status of Notifications Regarding Business Combinations and the Results of Reviews of Major Business Combinations in the Fiscal Year 2023*, JFTC (July 5, 2024), <https://www.jftc.go.jp/en/pressreleases/yearly-2024/July/240705.html> [<https://perma.cc/LG2B-FDDE>].

The JFTC maintained its stance to willingly review non-reportable transactions that may affect competition in Japan and reviewed thirteen non-reportable transactions that were voluntarily submitted by the parties or investigated by the JFTC *ex officio*.¹²⁵ One of these transactions was Adobe's acquisition of Figma, in which the JFTC commenced an investigation to assess a possible impact on domestic consumers.¹²⁶ The JFTC solicited comments from third parties during its review process, but the investigation was closed due to the termination of the acquisition agreement.¹²⁷ Another notable case was Korean Air's acquisition of Asiana Airlines, for which the JFTC carried out various economic analyses to evaluate potential incentives to raise fares.¹²⁸ The JFTC cleared the case with conditions requiring the implementation of structural and behavioral remedies.¹²⁹

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

In FY 2023, the JFTC opened investigations against 152 cases of suspected violations of the Antimonopoly Act (AMA) and issued decisions in 131 cases.¹³⁰ The JFTC took nine legal measures, including four cease-and-desist orders and five commitment plan approvals.¹³¹

In October 2023, the JFTC commenced an investigation against Google, alleging that Google was suspected of excluding competitors by, among other actions, entering into license agreements with mobile device manufactures under which Google makes the manufacturers install Google's applications, such as Google Search and Google Chrome, along with its application store called Google Play.¹³² This case has drawn attention as the first case in which the JFTC solicited information and comments from third parties at an early stage of the investigation.

In October 2024, the JFTC issued cease-and-desist orders and surcharge payment orders against four major general insurance companies for, among others, engaging in cartel activities (including exchange of information on premiums) that resulted

125. *Id.*

126. Japan Fair Trade Commission, *Closing the Review of the Proposed Acquisition of Figma, Inc. by Adobe Inc.*, JFTC (Dec. 21, 2023), https://www.jftc.go.jp/en/pressreleases/yearly-2023/December/231221_2.html [<https://perma.cc/RTR8-HEG5>].

127. *Id.*

128. Japan Fair Trade Commission, *The JFTC Reviewed the Proposed Acquisition of Asiana Airlines Inc. by Korean Air Co., Ltd.*, JFTC (Jan. 31, 2024), <https://www.jftc.go.jp/en/pressreleases/yearly-2024/January/240131.html> [<https://perma.cc/J3GT-NEGL>].

129. *Id.*

130. Japan Fair Trade Commission, *Annual Report of the Japan Fair Trade Commission (April 2023 – March 2024)*, JFTC (June 18, 2024), <https://www.jftc.go.jp/en/pressreleases/yearly-2024/June/240618.html> [<https://perma.cc/NKS2-QGPX>].

131. *Id.*

132. Japan Fair Trade Commission, *The JFTC Opens an Investigation and Seeks Information and Comments from Third Parties Concerning the Suspected Violation of the Antimonopoly Act by Google LLC, etc.*, JFTC (Oct. 23, 2023), <https://www.jftc.go.jp/en/pressreleases/yearly-2023/October/231023.html> [<https://perma.cc/4J2J-7T7P>].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

130 THE YEAR IN REVIEW

[VOL. 59]

in the maintenance of premiums and shares for various co-insurance products.¹³³ The investigation lasted one year from the dawn raids conducted in December 2023, and the total surcharges imposed on these four insurance companies amounted to approximately USD thirteen million.¹³⁴

IX. Korea

Authors: Youngjin Jung, Jiyeon Song, Maria Hajiyerou, and Eun Sun Jang, Kim & Chang

A. LEGISLATIVE DEVELOPMENTS

In February 2024, the Monopoly Regulation and Fair-Trade Law (FTL) was amended to expand merger filing exemptions for transactions with minimal anti-competitive concerns, introduce a voluntary remedy system to submit remedy proposals to the Korea Fair Trade Commission (KFTC), and increase the threshold for presuming market dominance from KRW four billion to eight billion.¹³⁵

In June 2024, the FTL Enforcement Decree was amended to clarify evaluation methods for compliance programs under the Fair-Trade Voluntary Compliance Program (CP), allowing companies with exceptional programs to receive lesser penalties.¹³⁶

B. MERGERS

The KFTC unconditionally approved Ansys' acquisition of a 34.68% in Safe Par-ent, finding Ansys would not likely gain substantial control.¹³⁷

The KFTC conditionally approved the combined 39.87% acquisition of SM Entertainment by Kakao and Kakao Entertainment, which operates streaming platform Melon.¹³⁸ The approval prohibited the merged entity from withholding music

133. Japan Fair Trade Commission, *The JFTC Issued Cease and Desist Orders and Surcharge Payment Orders against Non-Life Insurance Companies*, JFTC (Oct. 31, 2020), https://www.jftc.go.jp/houdou/pressrelease/2024/oct/241031_shinsa.html [<https://perma.cc/4HPS-WGCP>].

134. Global Cartel Fines See Dramatic Drop, A&O SHEARMAN (Mar. 19, 2025), <https://www.aoshearman.com/en/insights/global-antitrust-enforcement-report/global-cartel-fines-see-dramatic-drop> [<https://perma.cc/2H4G-66HZ>].

135. Five Amendments, Including an Amendment to the FTL, Passed by the National Assembly, KIM & CHANG (Jan. 31, 2024), https://www.kimchang.com/en/insights/detail.kc?sch_section=4&idx=28894 [<https://perma.cc/5USU-M232>].

136. Cabinet Passes Amendment to the FTL Enforcement Decree to Promote Fair Trade Voluntary Compliance Program, NEWSLETTERS (Jun. 5, 2024), https://www.kimchang.com/en/insights/detail.kc?sch_section=4&idx=29710 [<https://perma.cc/269F-GUPY>].

137. Korea OKs Ansys' Noncontrolling Stake Purchase in Humanetic, KOREATIME (Mar. 19, 2024), https://mobile.koreatimes.co.kr/www/tech/2024/03/419_370890.html [<https://perma.cc/JW9Q-JLY4>].

138. Kakao's Acquisition of SM Entertainment Marks Emergence of Mega Music Giant, BUS. KOREA (May 3, 2024), <https://www.businesskorea.co.kr/news/articleView.html?idxno=216406> [<https://perma.cc/JZ9L-M3TP>].

content from competitors and required it to establish an independent inspection committee.¹³⁹

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

In February, the Seoul High Court overturned a KFTC finding of price-fixing against twenty-three shipping lines, stating that the Marine Transportation Law exempted freight rates agreements from competition laws.¹⁴⁰ In September, the same court overturned a KFTC ruling in a duck meat cartel case, finding that certain agreements in the agricultural and livestock sectors qualify for exemption from competition laws.¹⁴¹

In February 2024, the Seoul High Court annulled the KFTC's fine and corrective orders against Coupang¹⁴² for abusing its superior bargaining position.¹⁴³ The Court held that Coupang did not hold a superior bargaining position and that the KFTC failed to prove that Coupang's conduct was coercive.¹⁴⁴

In August 2024, the KFTC imposed administrative fines and criminally referred Coupang for unfairly manipulating algorithms to prioritize its products in search rankings and creating fake reviews.¹⁴⁵

D. DOMINANCE

In January 2024, the Seoul High Court dismissed Google's appeal against a KFTC finding that Google stifled innovation in the mobile OS market by preventing device manufacturers from using competitors' forked OS.¹⁴⁶

In October 2024, the KFTC criminally referred and fined Kakao Mobility KRW 72.4 billion for demanding trade secrets from drivers about rival taxi services and

139. *Id.*

140. *Seoul Court Rules that Freight-Fixing Fine Was Wrongful to Evergreen*, CONTAINER NEWS (Feb. 2, 2024), <https://container-news.com/seoul-court-rules-that-freight-fixing-fine-was-wrongful-to-evergreen> [<https://perma.cc/5EHA-GT8R>].

141. Sangyun Lee, *Main Developments in Competition Law and Policy 2024-Korea*, WOLTERS KLUWER (Jan. 31, 2025), <https://competitionlawblog.kluwercompetitionlaw.com/2025/01/31/main-developments-in-competition-law-and-policy-2024-korea> [<https://perma.cc/LXG7-WRDN>].

142. Kang Minwoo & Park Hongju, *Decision to Cancel Tens of Billion Penalty for Two Days in a Row... the Humiliation of the Fair-Trade Commission*, MAEIL BUS. NEWSPAPER (Feb. 1, 2025), <https://www.mk.co.kr/en/society/10934740> [<https://perma.cc/MV9K-J2E4>].

143. *Id.*

144. *Id.*

145. Yonhap, *Coupang fined US \$102 Million for Manipulating Search Algorithm*, INSIDE RETAIL (June 13, 2024), <https://insideretail.us/coupang-fined-us102-million-for-manipulating-search-algorithm-product-reviews> [<https://perma.cc/RZ25-AB2L>].

146. Park Boram, *Court Upholds Antitrust Fine Against Google for Allegedly Enforcing Android OS*, YOHAP NEWS AGENCY (Jan. 24, 2024), <https://en.yna.co.kr/view/AEN20240124008000315> [<https://perma.cc/Z5LF-9SZ9>].

retaliating against drivers who refused by blocking access to the widely used Kakao T general-taxi service.¹⁴⁷

X. South Africa

Authors: Lara Granville, MGI Competition law

A. LEGISLATIVE DEVELOPMENTS

South Africa celebrated twenty-five years of competition law and saw the resignation of the Minister responsible for competition, Ebrahim Patel.¹⁴⁸ Prior to departing, Patel issued a block exemption applicable to small, micro, and medium-sized businesses¹⁴⁹ and Draft Vertical Restraints Regulations.¹⁵⁰

The Competition Commission (Commission) issued final guidelines relating to Public Interest in Merger Control,¹⁵¹ Indivisible Transactions,¹⁵² and the Automotive Aftermarket.¹⁵³

Liberty Mncube stepped down as a permanent panel member of the Competition Tribunal (Tribunal), leaving an even larger resources deficit at the Tribunal.¹⁵⁴

147. Lee Jae Lim, *FTC Fines Kakao Mobility for Demanding 'Trade Secrets' From Competitors*, KOREA JOONGANG DAILY (Oct. 2, 2024), <https://koreajoongangdaily.joins.com/news/2024-10-02/business/industry/FTC-fines-Kakao-Mobility-for-demanding-trade-secrets-from-competitors/2146617> [<https://perma.cc/UVE6-UVVR>].

148. *South Africa Trade Minister Announces Resignation*, TRT AFR. (May 24, 2024), <https://www.trtafrika.com/africa/south-africa-trade-minister-announces-resignation-18165926> [<https://perma.cc/HQ2G-4KDK>]; Shakti Wood, *Celebrating 25 Years of Competition Law in South Africa: But Can it Change the World?*, AFR. L. BUS. (May 11, 2024), <https://www.africanlawbusiness.com/expert-views/21786-celebrating-25-years-of-competition-law-in-south-africa-but-can-it-change-the-world> [<https://perma.cc/2RZX-2HRR>].

149. *Government Publishes Draft Block Exemption Regulations for Small, Micro & Medium-Sized Businesses*, MONDAQ LTD. (Sept. 2, 2022), <https://www.mondaq.com/southafrica/antitrust-eu-competition/1227124/government-publishes-draft-block-exemption-regulations-for-small-micro-and-medium-sized-businesses-2022> [<https://perma.cc/7CGD-N4QB>].

150. *Invitation for the Public to Comment on the Draft Vertical Restraints Regulation in Terms of the Competition Act 1998*, GN 2539 of GG 50746 (3 June 2024) (S. Afr.).

151. *Revised Public Interest Guidelines Relating to Merger Control*, GN 4544 of GG 50323 (20 Mar. 2024) (S. Afr.).

152. *Guidelines on Indivisible Transactions*, GN 5372 of GG 51352 (4 Oct. 2024) (S. Afr.).

153. *Guidelines for Competition in the South African Automotive Aftermarket*, GN 5385 of GG 51352 (4 October 2024) (S. Afr.).

154. *BRG Hires Senior Competition Expert in Johannesburg*, BRG (Oct. 16, 2024), <https://www.thinkbrg.com/news/mncube-brg-hires-senior-competition-expert-in-johannesburg/> [<https://perma.cc/S6V8-ZJDY>].

B. MERGERS

The Constitutional Court clarified that retrenchments will be considered “merger specific” and not “operational” where they are directly or predominantly linked to the merger.¹⁵⁵

The Tribunal upheld the Commission’s recommended prohibition of Vodacom’s acquisition of Maziv.¹⁵⁶ The public interest commitments offered by the merging parties are seen as a lost opportunity to roll out coverage to low-income consumers.¹⁵⁷

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

The Commission approached the Constitutional Court for leave to appeal the Competition Appeal Court’s (CAC) judgment in a case alleging collusion in the trading of USD/ZAR.¹⁵⁸ This decision released seventeen respondent banks from the case, keeping the prosecution against four banks alive.¹⁵⁹

The Commission launched an inquiry into the poultry market,¹⁶⁰ while inquiry hearings for Fresh Produce Markets and Media and Digital Platforms were concluded.¹⁶¹ It issued provisional findings in the Fresh Produce Market Inquiry¹⁶² and the MDPMI findings are to be issued by the end of this year.¹⁶³

The Commission settled with Booking.com, ending its review of the Commission’s Online Intermediation Platforms Market Inquiry (OIPMI).¹⁶⁴ Booking

155. *Coca-Cola Beverages Africa (Pty) Ltd v Competition Commission* 2024, ZACC (3) at 15 (S. Afr.).

156. *Commission Welcomes Tribunal Decision to Prohibit the Proposed Merger Between Vodacom & Maziv*, COMPETITION COMM’N S. AFR. 1, 1 (Oct. 29, 2024).

157. See Dep’t of Trade, Indus. & Competition, S. Afr., *Minister Parks Tau Notes Tribunal Order on Vodacom and Maziv Merger* (Oct. 29, 2024), <https://www.gov.za/news/media-statements/minister-parks-tau-notes-tribunal-order-vodacom-and-maziv-merger-29-oct-2024> [<https://perma.cc/9PLB-JBFR>].

158. *Commission Requests Leave to Appeal CAC Judgment in Case Against Banks Alleged to Have Colluded in the Rand/Dollar Currency Pair*, COMM’N S. AFR. ¶ 2 (Feb. 6, 2024).

159. *Id.* ¶ 3.

160. *Commission Invites Comments on Draft Tors on the Poultry Industry Value Chain*, COMPETITION COMM’N S. AFR. 1, 1 (Feb. 9, 2024), <https://www.compcom.co.za/wp-content/uploads/2024/02/Commission-Invites-Comments-on-Draft-ToRs-into-the-Poultry-Industry-Value-Chain.pdf> [<https://perma.cc/M259-MP8N>].

161. *Media and Digital Platforms Market Inquiry (MDPMI)*, COMPETITION COMM’N S. AFR. 1, 21 (Feb. 2025); *Fresh Produce Market Inquiry Final Report Released*, COMPETITION COMM’N S. AFR. 1, 1 (Jan. 15, 2024).

162. *Fresh Produce Market Inquiry Provisional Report*, COMPETITION COMM’N S. AFR., 17 (June 18, 2024), https://www.compcom.co.za/wp-content/uploads/2024/06/CC_FPMI-NonConfidential-Report-2024.pdf [<https://perma.cc/KUR8-XTPS>].

163. *Media and Digital Platforms Market Inquiry: Provisional Report to Be Released in November 2024*, COMPETITION COMM’N S. AFR., 1 (Oct. 11, 2024), <https://www.compcom.co.za/wp-content/uploads/2024/10/MDPMI-Provisional-Report-to-be-released-in-November-2024.pdf> [<https://perma.cc/K3SR-3TH7>].

164. *Booking.com & Competition Commission Reach Settlement on Online Intermediation Platforms Market Inquiry Appeal*, COMPETITION COMM’N S. AFR., ¶ 1 (Aug. 13, 2024), <https://www.compcom.co.za/wp-content/uploads/2024/08/booking-com-and-competition-commission-reach-settlement-on-online-intermediation-platforms-market-inquiry-appeal.pdf> [<https://perma.cc/D6QA-QTBC>].

agreed to remove certain price parity terms from contracts.¹⁶⁵ The Commission expressed hope that the other four firms with appeals against the OIPMI remedial actions will settle.¹⁶⁶

D. DOMINANCE

Sasol Gas failed to convince the CAC that the National Energy Regulator has sole jurisdiction to deal with pricing issues in piped gas.¹⁶⁷

The Tribunal issued an interim order directing Google to permit Lottoland South Africa to access its advertising services.¹⁶⁸ Google had contended that Lottoland's advertising breached local legislation and Google's terms of service.¹⁶⁹

The Tribunal granted interim relief to eMedia, allowing sports content sub-licensed by MultiChoice to the National Broadcaster to be carried on eMedia's satellite platform.¹⁷⁰ eMedia claims a restriction imposed by Multichoice, preventing such broadcast, constitutes exclusionary conduct.¹⁷¹

XI. United Kingdom

Authors: Neil Cuninghame and Fiona Garside, Ashurst LLP

A. LEGISLATIVE DEVELOPMENTS

In May 2024, the Digital Markets, Competition and Consumers Act (the Act) received Royal Assent.¹⁷² The Act introduces wide-ranging changes to UK competition law, including revised jurisdictional thresholds for merger control, and strengthens the Competition and Markets Authority's (CMA) investigative and enforcement powers.¹⁷³ The Act also implements the Government's digital markets strategy, including tailored codes of conduct and a bespoke merger reporting regime

165. *Id.* ¶ 2.

166. *Id.* ¶ 4.

167. *Welcome Statement: Sasol Gas CAC Decision*, COMPETITION COMM'N S. AFR., 2 (Mar. 5, 2024), <https://www.compcom.co.za/wp-content/uploads/2024/03/Welcome-Statement-Sasol-Gas-CAC.pdf> [<https://perma.cc/5E26-B7VV>].

168. Gillian de Gouveia, *Tribunal Grants Lottoland Interim Relief—Orders Google to Grant Lottoland Access to Its Advertising Platform*, COMPETITION TRIBUNAL OF S. AFR. (Nov. 12, 2024), <https://perma.cc/7SW3-LGTE>.

169. *Id.*

170. Gillian de Gouveia, *Tribunal Grants Emedia Interim Relief Against Multichoice, Supersport & SABC In Relation to the Broadcasting of Sporting Events on Television*, COMPETITION TRIBUNAL OF S. AFR. (Apr. 15, 2024), <https://www.comptrib.co.za/info-library/case-press-releases/tribunal-grants-emedias-interim-relief-against-multichoice-supersport-and-sabc-in-relation-to-the-broadcasting-of-sporting-events-on-television> [<https://perma.cc/7ZAB-GRK9>].

171. *Id.*

172. Digital Markets, Competition and Consumers Act 2024, c. 3 (UK).

173. Digital Markets, Competition and Consumers Act (UK).

for designated companies.¹⁷⁴ These provisions are expected to come into force in January 2025.¹⁷⁵

B. MERGERS

The CMA referred eight cases for a Phase 2 investigation between April 1, 2023, and October 31, 2024.¹⁷⁶ Of the twelve Phase 2 investigations completed in this period, six were unconditionally cleared, one was prohibited,¹⁷⁷ three required remedies and two were abandoned.

In 2024, the CMA reviewed six AI partnerships which involved the acquisition of small shareholdings.¹⁷⁸

In three cases, the CMA concluded that it did not have jurisdiction because: (i) the partnership did not give rise to material influence and/or (ii) the jurisdictional thresholds (i.e., target turnover and share of supply test) were not met.¹⁷⁹

In Microsoft/Inflection,¹⁸⁰ the CMA asserted jurisdiction based on the transfer of the core Inflection team combined with access to Inflection's IP. The transaction was cleared at Phase I as Inflection has a limited UK presence.¹⁸¹ Two transactions are still under review as of November 27, 2024.¹⁸²

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

The CMA continues to pursue anti-competitive behaviour and cost-of-living issues—in 2024, the CMA opened its first enforcement investigation following a market study since 2021, after it found evidence that housebuilders may be sharing commercially sensitive information.¹⁸³

The CMA continues to scrutinise potentially anti-competitive conduct in labour markets, with three ongoing investigations: two relate to freelance and employed

174. *Id.* at 2.

175. *Id.* at 1.

176. Competition & Mkts. Auth, *Microsoft / Activision Blizzard (Ex-Cloud Streaming Rights) Merger Inquiry*, GOV.UK (Oct. 13, 2023), <https://www.gov.uk/cma-cases/microsoft-slash-activision-blizzard-ex-cloud-streaming-rights-merger-inquiry> [<https://perma.cc/V75F-JNBM>].

177. *Id.*

178. *Id.*

179. Irene Dettori et al., *UK Aims to Promote Growth Through Legislation: CMA Merger Control Powers in Focus Again*, MORGAN LEWIS (Apr. 2, 2025), <https://www.morganlewis.com/pubs/2025/04/uk-aims-to-promote-growth-through-legislation-cma-merger-control-powers-in-focus-again> [<https://perma.cc/D8DD-MFJG>].

180. *Microsoft's Hiring of Inflection AI Employees and Associated Arrangements: Decision on Relevant Merger Situation and Substantial Lessening of Competition*, COMPETITION & MKTS. AUTH., CMA/14/24, ME 7103/24 (Sept. 4, 2024), https://assets.publishing.service.gov.uk/media/6719ff549f63039436b3c8/_Full_text_decision_.pdf [<https://perma.cc/5CGU-DWSA>].

181. *Id.* at 11.

182. Competition & Mkts. Auth., *Microsoft/Inflection AI Inquiry*, GOV.UK (Sept. 4, 2024), <https://www.gov.uk/cma-cases/microsoft-slash-inflection-ai-inquiry> [<https://perma.cc/Y7CU-7DGG>].

183. Competition & Mkts. Auth., *Investigation into Suspected Anti-Competitive Conduct by Housebuilders*, GOV.UK (Jan. 10, 2025), <https://www.gov.uk/cma-cases/investigation-into-suspected-anti-competitive-conduct-by-housebuilders> [<https://perma.cc/ML8R-S4EV>].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

136 THE YEAR IN REVIEW

[VOL. 59]

workers in the production, creation, and/or broadcasting of TV content¹⁸⁴ and one relates to the fragrance sector.¹⁸⁵

D. DOMINANCE

In August 2024, the CMA closed its investigations into the Apple App Store and Google Play Store on “administrative priority” grounds.¹⁸⁶ The investigations related to concerns that Apple and Google were using their market positions to set terms that may be unfair to UK app developers and that may restrict competition and consumer choice.¹⁸⁷ In its press release, the CMA indicated that it may apply its new powers under the Act to concerns that have “already identified through [its] existing work.”¹⁸⁸

XII. United States

Authors: Lisl Dunlop and Sarah Spangler, Axinn, Veltrop & Harkrider LLP.

A. LEGISLATIVE DEVELOPMENTS

In December 2023, the Federal Trade Commission (FTC) and Department of Justice Antitrust Division (DOJ) finalized new Merger Guidelines which cover horizontal and non-horizontal transactions and present a wide range of potential anti-competitive harms.¹⁸⁹

The FTC finalized changes to the Hart-Scott-Rodino (HSR) premerger notification process, which will require HSR filers to provide significantly more information and documentation.¹⁹⁰

184. Competition & Mkts. Auth., *Suspected Anti-Competitive Behaviour Relating to Freelance and Employed Labour in the Production, Creation and/or Broadcasting of Television Content, Excluding Sport*, GOV.UK (Mar. 21, 2025), <https://www.gov.uk/cma-cases/suspected-anti-competitive-behaviour-relating-to-freelance-and-employed-labour-in-the-production-creation-and-slash-or-broadcasting-of-television-content-excluding-sport> [https://perma.cc/3KHW-Y9S3].

185. Competition & Mkts. Auth., *Suspected Anti-Competitive Conduct in Relation to Fragrances and Fragrance Ingredients*, GOV.UK (Dec. 2, 2024), <https://www.gov.uk/cma-cases/suspected-anti-competitive-conduct-in-relation-to-fragrances-and-fragrance-ingredients-51257> [https://perma.cc/NDK2-EVM9].

186. Competition & Mkts. Auth., *CMA Looks to New Digital Markets Competition Regime to Resolve App Store Concerns*, GOV.UK (Aug. 21, 2024), <https://www.gov.uk/government/news/cma-looks-to-new-digital-markets-competition-regime-to-resolve-app-store-concerns> [https://perma.cc/NDK2-EVM9].

187. *Id.*

188. *Id.*

189. See generally F.T.C. & Dep’t of Just., *Merger Guidelines* (Dec. 18, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf [https://perma.cc/BG2K-TTM6].

190. F.T.C., *FTC Finalizes Changes to Premerger Notification Form* (Oct. 10, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/10/ftc-finalizes-changes-premerger-notification-form> [https://perma.cc/WHG5-D2P5].

B. MERGERS

In June 2024, Novant Health avoided a preliminary injunction of its attempted acquisition of two North Carolina hospitals, asserting that absent the acquisition, the hospitals' financial performance and competitive significance would dramatically decline.¹⁹¹ The transaction was subsequently terminated, leaving the requirements for a "failing firm defense" unresolved.¹⁹²

In October, the FTC won a preliminary injunction to enjoin the merger of handbag manufacturers Tapestry and Capri, demonstrating the weight courts place on ordinary business documents for product market definition.¹⁹³

C. CARTELS AND ANTI-COMPETITIVE PRACTICES

The DOJ maintained its strong stance against labor market collusion, notably "no-poach" arrangements.¹⁹⁴

Several lawsuits have been brought by private plaintiffs and federal and state regulators against entities that help their customers set prices using common algorithms.¹⁹⁵ Notable cases involve property management software (RealPage) and hotel pricing platforms (Rainmaker).¹⁹⁶

D. DOMINANCE

The FTC, eighteen states and Puerto Rico continued their landmark lawsuit against Amazon, alleging that Amazon's anti-discounting measures prevent competition by offering lower prices and using coercive tactics involving order-fulfillment services.¹⁹⁷

The DOJ and sixteen state attorneys general filed a case against Apple in March 2024, alleging that the tech giant monopolized the smartphone market contrary to the Sherman Antitrust Act.¹⁹⁸

191. FTC v. Novant Health, Inc., No. 24-1526 slip op. at 1-2 (4th Cir. July 24, 2024).

192. See *id.* at 2.

193. See F.T.C. v. Tapestry, Inc. & Capri Holdings Ltd., No. 1:24-cv-03109, at 159 (S.D.N.Y. 2024).

194. Dee Bansal et al., *The 'No-Poach' Approach: Trends in Antitrust Enforcement of Employment Agreements*, GLOB. COMPETITION REV. (Oct. 28, 2024), <https://globalcompetitionreview.com/review/the-antitrust-review-of-the-americas/2025/article/the-no-poach-approach-trends-in-antitrust-enforcement-of-employment-agreements> [<https://perma.cc/J8WA-A23G>].

195. David C. Kully et al., DOJ "Triples Down" on View that Use of Pricing Algorithms Can Support Price-Fixing Claims, HOLLAND & Knight (Apr. 24, 2024), <https://www.hklaw.com/en/insights/publications/2024/04/doj-triples-down-on-view-that-use-of-pricing-algorithms-can-support> [<https://perma.cc/SWL6-7JDJ>].

196. *Id.*

197. F.T.C., *Amazon, Inc. (Amazon eCommerce)* (Mar. 15, 2024), <https://www.ftc.gov/legal-library/browse/cases-proceedings/1910129-1910130-amazoncom-inc-amazon-e-commerce> [<https://perma.cc/C9FA-75WV>].

198. U.S. Dep't Just., *Justice Department Sues Apple for Monopolizing Smartphone Markets* (Mar. 21, 2024), <https://www.justice.gov/archives/opa/pr/justice-department-sues-apple-monopolizing-smartphone-markets> [<https://perma.cc/2Y4V-LZ9D>].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

138 THE YEAR IN REVIEW

[VOL. 59]

The DOJ and several states brought two cases against Google.¹⁹⁹ The first alleged that Google monopolized search and search advertising markets.²⁰⁰ The District Court found for the DOJ in August 2024, and the case is in the remedies stage.²⁰¹ The second suit alleges that Google has monopolized multiple digital advertising technology products (the “ad tech stack”) that are crucial for website publishers to sell and advertisers to purchase digital ads.²⁰²

Epic Games sued Apple and Google separately for allegedly monopolizing their app stores.²⁰³ Apple prevailed on nine of ten claims, being enjoined only from anti-steering practices.²⁰⁴ In October, the District Court found for Epic in the Google suit but lifted the injunction pending the resolution of Google’s appeal to the Fourth Circuit.²⁰⁵

In September, Particle Health Systems sued Epic Systems Corporation, alleging that Epic illegally monopolized the payer platform market.²⁰⁶

199. David D. Cross et al., *Google is an Illegal Monopoly*, *Federal Court Rules*, GOODWIN (Aug. 14, 2024), <https://www.goodwinlaw.com/en/insights/publications/2024/08/alerts-technology-antc-google-is-an-illegal-monopoly-federal-court-rules> [https://perma.cc/Q3WV-D2E3].

200. *Id.*

201. *Id.*

202. U.S. Dep’t Just., *Justice Department Sues Google for Monopolizing Digital Advertising Technologies* (Jan. 24, 2023), <https://www.justice.gov/archives/opa/pr/justice-department-sues-google-monopolizing-digital-advertising-technologies> [https://perma.cc/N7YA-HYW4].

203. *Epic Games, Inc. v. Apple, Inc.*, No.21-16506 (9th Cir. 2023).

204. *Id.*

205. *Id.*

206. *Particle Health Inc. v. Epic Systems Corp.*, No. 1:24-cv-07174, at 24 (S.D.N.Y. filed Sept. 23, 2024).

International Tax

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I. 2024 Developments in Global Minimum Tax in Canada, Costa Rica, The European Union, And Puerto Rico

The year 2024 marked a transformative chapter in the global tax landscape, characterized by the rapid evolution of international tax policies, significant advancements in multilateral cooperation, and challenges of implementation faced by jurisdictions worldwide.¹ As economies navigated the complexities of post-pandemic recovery and fiscal sustainability, the drive toward harmonizing tax standards under the OECD/G20 Inclusive Framework (IF) remained central to policy deliberations.² Notably, the implementation of the Pillar Two Global Anti-Base Erosion (GloBE) rules, designed to impose a fifteen percent global minimum tax on multinational enterprises (MNEs), dominated the international tax agenda, reshaping the frameworks governing cross-border business operations.³

This review encapsulates the key developments in international tax law, with a particular focus on the diverse approaches adopted by jurisdictions in aligning with the global minimum tax. It examines the landmark legislation enacted, the administrative and compliance challenges encountered, and the strategic policy shifts

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1. See Org. for Econ. Coop. and Dev. [OECD], *Statement by the Co-Chairs of the OECD/G20 Inclusive Framework on BEPS*, (May 12, 2024), <https://www.oecd.org/en/about/news/announcements/2024/05/statement-by-the-co-chairs-of-the-oecd-g20-inclusive-framework-on-beps.html> [<https://perma.cc/38CA-AU9D>].

2. See *id.*

3. See generally Org. for Econ. Coop. and Dev. [OECD], *Global Anti-Base Erosion Model Rules (Pillar Two)*, <https://www.oecd.org/en/topics/sub-issues/global-minimum-tax/global-anti-base-erosion-model-rules-pillar-two.html> [<https://perma.cc/AW3F-AJ6V>].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

140 THE YEAR IN REVIEW

[VOL. 59]

aimed at balancing competitiveness with adherence to global standards. By offering a comparative analysis of major jurisdictions (Canada, the European Union, Costa Rica, and Puerto Rico), the review sheds light on the dynamic interplay between domestic priorities and global commitments.

The international community's progress in advancing the Pillar Two agenda underscores the dual imperatives of combatting tax base erosion and ensuring equitable tax practices.⁴ But as countries navigate these reforms, unresolved questions persist regarding the economic implications, administrative feasibility, and long-term impact on foreign direct investment.⁵ In particular, jurisdictions like Costa Rica⁶ and Puerto Rico⁷, reliant on tax incentives to attract investment, and the European Union⁸, spearheading implementation despite inter-member challenges, illustrate the delicate balancing act of embracing global norms while safeguarding national interests.

Throughout 2024, legislative milestones such as Canada's Global Minimum Tax Act (GMTA) and the EU's Pillar Two Directive signaled a commitment to international tax reforms.⁹ These frameworks not only harmonized tax bases but also set the stage for future developments, including the rollout of the "undertaxed profits rule" (UTPR) and administrative guidance.¹⁰ Meanwhile, debates over the competitiveness of these measures, coupled with compliance and litigation challenges, emphasized the multifaceted nature of tax reform in a globally interconnected economy.

The review also explores the broader implications of these changes, from the shifting tax strategies of multinational enterprises to the role of emerging economies in shaping global tax policy. As jurisdictions like Costa Rica deliberate over the implementation of Pillar Two against the backdrop of critical domestic policy needs, and as the European Union confronts legal challenges to its ambitious directives, 2024 has underscored the importance of adaptability and collaboration in achieving sustainable tax governance.

In the following pages, this "Year in Review" provides a detailed examination of the international tax developments across key jurisdictions. By highlighting legislative innovations, compliance practices, and policy debates, it offers valuable insights into the evolving international tax landscape. Whether exploring the nuances of the GMTA, analyzing the EU's approach to GloBE rules, or assessing the unique

4. See *id.*

5. See *Understanding Costa Rica's Tax Incentives for Investors and Retirees*, COSTA RICA L., <https://costaricalaw.com/costa-rica-legal-topics/taxes-in-costa-rica/understanding-costa-ricas-tax-incentives-for-investors-and-retirees/> [<https://perma.cc/Q4Q4-VSYX>]; *Puerto Rico: Corporate - Tax credits and incentives*, PWC (Mar. 3, 2025), <https://taxsummaries.pwc.com/puerto-rico/corporate/tax-credits-and-incentives> [<https://perma.cc/4LRZ-888B>]; *Implementation and Enforcement of Environmental Law [IMPEL], Implementation Challenge 21 – Results Summary*, (Nov. 29, 2022), <https://www.impel.eu/contents/libraryfile/Implementation%20Challenge%202021%20Summary.pdf> [<https://perma.cc/NQR7-SYAT>].

6. See *Understanding Costa Rica's Tax Incentives*, *supra* note 5.

7. See *Tax Credits and Incentives*, *supra* note 5.

8. See *Implementation Challenge 21*, *supra* note 5.

9. See *Global Anti-Base Erosion*, *supra* note 3.

10. See *id.*

challenges faced by smaller economies, the review seeks to present a comprehensive narrative of the milestones that defined 2024 in international tax law.

As we move forward, the lessons of 2024 will undoubtedly shape the discourse on global tax policy, setting the stage for further reforms in the years ahead. This review serves as both a reflection on the achievements of the past year and a guide to navigating the complexities of the future.

II. Canada

In 2024, Canada enacted the Global Minimum Tax Act (Canada)¹¹ (GMTA) as part of its commitment to the Pillar Two provisions of the OECD/G20 BEPS (Base Erosion, Profit Shifting) framework. The GMTA was enacted as a stand-alone taxing statute, separate from the Income Tax Act (Canada).¹² Generally, the Global Minimum Tax (GMT) levied under the GMTA aims to ensure that large multinational enterprises are subject to an effective tax rate of at least fifteen percent on their profits.¹³

The GMTA applied as of January 1, 2024, and currently comprises two key components of the Pillar Two provisions: (i) a top-up tax on Canadian-based entities with foreign subsidiaries under its income inclusion rule (IIR) to ensure a minimum effective tax rate of fifteen percent, and (ii) a domestic minimum top-up tax (DMTT), which is intended to constitute a “qualified domestic minimum top-up tax” for purposes of the OECD model rules.¹⁴ A third component, the UTPR, is currently proposed as an amendment to the GMTA but has not yet been legislatively enacted.¹⁵

The following discussion is a summary of Canada’s approach to these components of the Pillar Two provisions.

A. THE TOP-UP TAX

Part two of the GMTA imposes a top-up tax on a person (which includes a corporation, partnership, or trust) that is a “relevant parent entity,” located in Canada, of a “qualifying MNE group.”¹⁶ An “MNE group” is a group that includes at least one entity¹⁷ or permanent establishment located outside the jurisdiction in which

11. Global Minimum Tax Act, S.C. 2024, c 17, s 81 (Can.).

12. *Global Minimum Tax Act – Observations on Assessments and Admin.*, KPMG (Sep. 15, 2024), <https://kpmg.com/ca/en/home/insights/2024/09/global-minimum-tax-act-observations.html> [<https://perma.cc/CT7V-TXJD>].

13. See Global Minimum Tax Act, s 2.

14. Org. for Econ. Coop. and Dev. [OECD], *Tax Challenges Arising from the Digitalisation of the Econ. – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS*, (Dec. 20, 2021).

15. *Canada Proposes UTPR and Further Amendments to Global Minimum Tax Act*, EY (Sep. 6, 2024), <https://taxnews.ey.com/news/2024-1654-canada-proposes-utpr-and-further-amendments-to-global-minimum-tax-act> [<https://perma.cc/YLN7-3C4P>].

16. Global Minimum Tax Act, s 14(1).

17. The definition of “entity” in the GMTA is broader than the definition of “person,” and includes, in addition to corporations, partnerships and trusts, any other arrangement, association,

the ultimate parent entity of the group is located.¹⁸ An MNE group will constitute a “qualifying MNE group” for a particular fiscal year if its annual revenues, as reported in the consolidated financial statements of the group’s ultimate parent entity, equals or exceeds €750 million (approximately CAD 1.1 billion at current exchange rates) in at least two of the four immediately preceding fiscal years.¹⁹

An “ultimate parent entity” in respect of an MNE group is an entity that has, directly or indirectly, a controlling interest in another entity in the group and is not itself controlled, directly or indirectly, by any other entity.²⁰ A “relevant parent entity” in respect of an MNE group is an entity that is located in Canada (or another Pillar Two jurisdiction with a qualified IIR) and is either the ultimate parent entity of the group or, if the ultimate parent entity of the group is not located in Canada or another Pillar Two jurisdiction with a qualified IIR, is an intermediate or partially-owned parent entity of the MNE group that is not controlled by a parent entity located in Canada or another Pillar Two jurisdiction with a qualified IIR.²¹

Generally, under the GMTA framework, any person with a location in Canada that controls a foreign entity and is not itself controlled by an entity in Canada or another Pillar Two jurisdiction with a qualified IIR will need to regularly assess whether it is part of a qualifying MNE group and, if it is, determine its liability, if any, for the top-up tax.²²

Canada’s mechanism of implementing the top-up tax is complex but involves an incremental calculation based on the effective tax rate (ETR) of a qualifying MNE group in each foreign jurisdiction where it operates.²³ If the ETR in a given jurisdiction (i.e., a low tax jurisdiction) falls below the fifteen percent minimum, the GMTA’s “top-up” tax is applied at the relevant parent entity level to make up the difference.²⁴ This tax top-up is designed to ensure that even if an MNE group shifts profits to low-tax jurisdictions, the ETR on its global income meets the minimum standard of fifteen percent.²⁵ The top-up tax under the GMTA is paid to the Canadian tax authorities rather than the local tax authorities in low-tax jurisdictions.²⁶

The top-up tax is calculated on a country-by-country basis.²⁷ Accordingly, the ETR of each foreign entity is assessed separately for purposes of calculating the relevant parent entity’s top-up tax liability.²⁸ This ensures that any under-taxed

organization, or body for which separate financial accounts are prepared (other than governments or government agencies).

18. Global Minimum Tax Act, s 10(1).

19. *Id.* s 9(1).

20. *Id.* s 12(1).

21. *Id.* s 14(3).

22. *Id.* s 14(1).

23. *See id.* s 30(1).

24. *See* Global Minimum Tax Act, s 30(1).

25. *See id.*

26. *See id.* s 50.

27. *See id.* s 30(1).

28. *See id.*

income in a particular jurisdiction is addressed without affecting the tax treatment of other jurisdictions where the tax rate meets the global minimum standard.²⁹

B. THE DOMESTIC MINIMUM TOP-UP TAX

Part three of the GMTA contains the provisions implementing Canada's DMTT.³⁰ The DMTT is generally imposed in respect of income of an entity (or permanent establishment of an entity) located in Canada if it is part of an MNE group and the group's Canadian ETR is below fifteen percent.³¹ Notably, the Canadian DMTT differs from domestic minimum top-up taxes implemented in some other jurisdictions in that the DMTT only applies to Canadian entities that are part of an MNE group—it does not apply to groups that are entirely domestic.³²

As noted above, the DMTT is intended to constitute a qualified domestic minimum top-up tax for purposes of the OECD/G20 BEPS framework and therefore be eligible for the framework's safe harbor.³³ Accordingly, Canadian entities of MNE groups should generally only be liable for top-up taxes in Canada.³⁴

An exemption from the DMTT is available for MNE groups that are in the initial phase of their international activities—a determination made by reference to the net book value of a group's assets located outside of the group's reference jurisdiction.³⁵ The reference jurisdiction of an MNE group will generally be the jurisdiction in which a constituent entity was located in the first fiscal year that the MNE group became subject to a qualified UTPR and for which the net book value of tangible assets located in the jurisdiction for that first fiscal year exceeded the sum of the net book value of tangible assets located in any other single jurisdiction for that year.³⁶

In order to qualify for the DMTT exemption, an MNE group must be located in no more than six jurisdictions, and the net book value of its tangible assets located outside of its reference jurisdiction must not exceed €50 million (approximately CAD 73.8 million as of late 2024 exchange rates).³⁷ This exemption is not available if a relevant parent entity directly or indirectly owns Canadian entities of the group and is liable for a foreign top-up tax in respect of the Canadian entities.³⁸

29. See *id.*

30. See Global Minimum Tax Act, s 51-52.

31. See *id.*

32. See *id.*

33. See *Explanatory Notes Relating to the Global Minimum Tax Act*, DEPUTY PRIME MINISTER & MINISTER OF FIN. (May 15, 2024), <https://fin.canada.ca/drleg-apl/2024/nwmm-amvm-0424-n-3-eng.html> [<https://perma.cc/HA9P-AJCW>].

34. See *id.*

35. See Global Minimum Tax Act, s 53(1).

36. *Id.*

37. *Id.*

38. *Id.* s 53(3).

C. PROPOSAL TO INTRODUCE AN UNDERTAXED PROFITS RULE

Draft amendments to the GMTA were released on August 12, 2024.³⁹ They propose to add a third component of the Pillar Two provisions – UTPR.⁴⁰ The UTPR is scheduled to become effective beginning on January 1, 2025, pending formal enactment of the amendments.⁴¹ Generally, the UTPR is intended to apply to foreign-source profits that are not subjected to a top-up tax under an IIR.⁴² For example, the UTPR might apply to foreign-source profits income earned in a low tax jurisdiction by an entity with no relevant parent entity.⁴³

D. CONCLUSION

The GMTA is an important piece of legislation designed to combat international tax avoidance and ensure fair taxation for multinational groups. It reflects Canada's commitment to international tax reforms under the OECD/G20 BEPS framework and promises to have significant long-term effects on corporate tax planning and global tax competition.

II. Costa Rica

In May 2021 Costa Rica became the thirty-eighth member and fourth Latin American country to join the OECD, along with Mexico, Chile, and Colombia, after successfully concluding the membership process that began in 2015.⁴⁴ Costa Rica agreed, as an aspiring member of the OECD, and as a member, to the implementation of the BEPS Convention, BEPS 2.0, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS, the Common Reporting Standards (CRS), the improvement of the automatic exchange of tax information, the taxation of the digital economy, taxation of permanent establishments, and a higher control on tax evasion and money laundry, among others.⁴⁵ Some of these commitments have been easily implemented, such as the approval of the Multilateral Instrument (MLI),⁴⁶ the incorporation of transfer pricing regulations to the

39. *Canada Proposes UTPR*, *supra* note 15.

40. *Legis. Proposals Relating to the Global Minimum Tax Act and to the Income Tax Conventions Interpretation Act*, Government of Canada, <https://fin.canada.ca/drleg-apl/2024/ita-lir-0824-l4-eng.html> [<https://perma.cc/3UTU-HGDX>].

41. *See id.*

42. *See id.*

43. *See id.*

44. Org. Econ. Coop. and Dev. [OECD], *OECD Welcomes Costa Rica as its 38th Member* (May 25, 2021), <https://www.oecd.org/en/about/news/press-releases/2021/05/oecd-welcomes-costa-rica-as-its-38th-member.html> [<https://perma.cc/9Z6Q-CGKJ>].

45. Org. Econ. Coop. and Dev. [OECD], *Harmful Tax Practices – 2023 Peer Review Reports on the Exchange of Information on Tax Rulings: Inclusive Framework on BEPS: Action 5*, OECD/G20 Base Erosion and Profit Shifting Project 113–15 (2024), <https://doi.org/10.1787/efbad00d-en> [<https://perma.cc/VH8X-3LCB>].

46. *Costa Rica Ratifies OECD Multilateral Instrument*, GLOB. TAX NEWS (November 14, 2019), <https://globaltaxnews.ey.com/news/2019-6434-costa-rica-ratifies-oecd-multilateral-instrument> [<https://perma.cc/FH9L-QHGQ>].

Income Tax Law,⁴⁷ and the incorporation of an anti-abuse rule to the Tax Code of Standards and Procedures.⁴⁸ Others, such as BEPS 2.0, require much more attention from the Costa Rican Authorities, as this can drive important consequences to the local economy—an economy fed by foreign direct investment, mainly through the Free Trade Zone Regime with the operation of many multinational's manufacturing sites and service centers.⁴⁹ In 2023, Costa Rica received \$3.921 million in foreign direct investment, where the Free Trade Zone regime received sixty-one percent of the funds, with the United States as the main investor (seventy-one percent).⁵⁰

The Costa Rican Free Trade Zone Regime grants different tax benefits, including a 100% exemption on the remittances abroad tax, exemption on Income Tax, or a preferential Income Tax rate (depending on the years of operation in the regime and location of the project), VAT exemption, and import duties exemption, among others.⁵¹ Nonetheless, even with these exemptions, the Free Trade Zone regime represented 14% of the gross domestic product (GDP) in 2023, generating \$12.276 million.⁵² This means that per every dollar that was exempt, the Free Trade Zone regime generated \$2.8 million in return.⁵³

Costa Rica's tax system is based on the "territoriality principle," whereby only income derived from Costa Rican sources is subject to Income Tax.⁵⁴ Costa Rican source income is income obtained during the fiscal year, derived from services provided, assets located, and capitals invested exclusively in the Costa Rican territory in accordance with the definition of national territory established in the Costa Rican Constitution.⁵⁵ Although income generated through a Free Trade Zone is generated within national territory, Costa Rica made the decision to capitalize on an exemptions regime to attract foreign investment.⁵⁶ That decision has made Costa Rica a success story when it comes to linking foreign investment and economic and social development of a country.

47. Ley del Impuesto sobre la Renta, Ley No. 7092, 21 de abril de 1988 (Costa Rica).

48. Armando Lara Yaffar, Quyen Huynh, *How LATAM's Principal Purpose Tests Impact Holding Companies*, TAX MGMT. INT'L J. (Oct. 3, 2024).

49. Juan Martin Jovanovich, et al., *BEPS 2.0: Issues and Implication for Latin America*, 51 TAX MGMT. INT'L J., 9 (Jan. 7, 2021).

50. Costa Rican Foreign Trade Dep't, *Costa Rica Breaks Record for Foreign Direct Inv. in 2023* (April 3, 2024), <https://www.comex.go.cr/sala-de-prensa/comunicados/2024/abril/cp-2947-cos-tarica-romper> [<https://perma.cc/FB4P-YW2C>].

51. Lang & Asociados, *Free Trade Zone Regime in Costa Rica*, LANG & ASOCIADOS (2023), https://www.langcr.com/free_trade_costa_rica.html [<https://perma.cc/292N-3Z9D>].

52. See Costa Rican Foreign Trade Promotion Office, *Free Trade Zone A Driver of Competitive-ness And Econ.g Growth*, <https://www.procomer.com/wp-content/uploads/Zona-Franca-Un-Motor-de-Competitividad-y-Crecimiento-Economico-en-Costa-Rica-2023.pdf> (last visited, 21 March 2025) [<https://perma.cc/D4Y3-ZCQD>].

53. See *id.*

54. *Taxes on Corporate Income: Costa Rica*, PWC TAX SUMMARIES (Jan. 15, 2025), <https://taxsummaries.pwc.com/costa-rica/corporate/taxes-on-corporate-income> [<https://perma.cc/HQF3-DBUZ>].

55. *Id.*

56. *Id.*

The implementation of Pillar Two comes with a big challenge for Costa Rica, as this would probably mean the country would have to adopt some changes to the Free Trade Zone Regime.⁵⁷ The regime was thoroughly analyzed by the OECD when Costa Rica's approval process to become a member country began in 2015, and only small recommendations were made to improve the regime.⁵⁸ In addition, the implementation and application of Pillar Two rules are difficult from an administrative point of view as well as from an economic and financial perspective, for a country that has bet on tax incentives to attract foreign investors.⁵⁹ Pillar Two represents a challenge to the future of tax incentives, and it may force countries such as Costa Rica toward other non-tax incentives to attract foreign investment.⁶⁰ Even if it is possible to introduce non-tax incentives to attract foreign investment, the capability to do so would depend on numerous issues.⁶¹ Moreover, no local experience exists to assure a successful result for these types of incentives to attract the amount of dollars Costa Rica has received through tax incentives.⁶²

At this point, Costa Rica remains cautious regarding the implementation of Pillar Two, waiting on other countries' reactions and the outcomes of the implementation in their economies.⁶³ Moreover, and most importantly, Costa Rica may wait to see how the U.S. election will affect the implementation of the global minimum tax, as many have spoken out against the implementation of more taxes, and the global minimum tax, in particular.⁶⁴ This remains relevant for Costa Rica, as the United States is its major investor, representing seventy-one percent of the country's foreign direct investment.⁶⁵

Some believe Costa Rica should rush and comply with Pillar Two, as this would improve the international community's perception of the country's compliance with international tax principles and agreements.⁶⁶ They also consider the minimum global tax to be a way to increase tax collection, providing more funds to the government at a time where a tax deficit can have, and has had, important

57. See generally *Global Anti-Base Erosion*, *supra* note 3.

58. Org. Econ. Coop. and Dev. (OECD), *OECD Summary Report: Taxation in Costa Rica* (July 31, 2020).

59. Felipe Guevara, *Global Minimum Tax and Its Considerations for Costa Rica*, Consortium Legal (June 4, 2024), <https://consortiumlegal.com/en/2024/06/04/global-minimum-tax-and-its-considerations-for-costa-rica/> [https://perma.cc/E7V4-6KS7].

60. See *id.*

61. Svetislav V. Kostić, *Pillar 2 and Alternatives for Attracting (as well as Keeping) Foreign Investments*, KLUWER INT'L TAX BLOG (Aug. 14, 2024), <https://kluwertaxblog.com/2024/08/14/pillar-2-and-alternatives-for-attracting-as-well-as-keeping-foreign-investments/> [https://perma.cc/S2AP-RGA2].

62. See Mariela Hernandez, *Costa Rica's Dilemma: Tax Big Bus.s or Keep Corp. Benefits Flowing*, NEARSHORE AMERICAS (July 3, 2024), <https://nearshoreamericas.com/costa-ricas-dilemma-tax-big-business-or-keep-corporate-benefits-flowing/> [https://perma.cc/FN63-Q6WH].

63. DENTONS, *Global Tax Guide to Doing Bus. in Costa Rica*, <https://www.dentons.com/en/services-and-solutions/global-tax-guide-to-doing-business-in/costa-rica> [https://perma.cc/4QJ6-ETKN].

64. Rafael Sayagués, Daniel Quesada, *COSTA RICA: An Introduction to Tax*, CHAMBERS & PARTNERS, <https://chambers.com/content/item/6162> [https://perma.cc/KN4L-FUMH].

65. Costa Rican Foreign Trade Dep't, *Costa Rica Breaks Record for Foreign Direct Inv. in 2023*, <https://www.comex.go.cr/sala-de-prensa/comunicados/2024/abril/cp-2947-costa-rica-rompe-r%C3%A9cord-de-inversi%C3%B3n-extranjera-directa-en-el-2023/> [https://perma.cc/FB4P-YW2C].

66. See Sayagués, *supra* note 64.

consequences in Costa Rica, especially for health and social investment, as well as infrastructure investment.⁶⁷ But this line of thinking assumes that if a minimum global tax is implemented, foreign investment levels in Costa Rica would remain the same. It does not consider the risk of a possible exit of enterprises that employ around 180,000 individuals.⁶⁸

In contrast, others believe Costa Rica should focus on implementing other initiatives that, as a country member of OECD, should have been implemented long time ago.⁶⁹ For example, even though the Income Tax Law has included transfer pricing regulations since 2019, the informative annual statement that should be filed by taxpayers, including companies operating under the Free Trade Zone Regime, has not yet been implemented.⁷⁰ Other international tax issues that should be tackled first, before thinking about a minimum global tax, include the Common Reporting Standards (CRS), the improvement of the automatic exchange of tax information, the taxation of the digital economy, and expanding Costa Rica's double taxation treaties, as only four treaties are in force today.⁷¹ It seems illogical for a member country to not even have double taxation treaties with other OECD members.

As of the writing of this article, no bill of law has been introduced to Congress regarding the implementation of Pillar Two, although this matter has been discussed for the last twelve to eighteen months, at least.⁷² Nonetheless, it is unknown how aggressive or conservative this implementation will be, which presents an opportunity to ask questions regarding the feasibility for Costa Rica, as an alternative to protect foreign direct investment in the Free Trade Zone Regime, to implement a minimum tax on digital economies. It will be some time before these and other questions can be answered. It will be even longer before the effects of the implementation of Pillar Two in Costa Rica are known.

67. Guevara, *supra* note 59.

68. *Id.*

69. See Sayagués, *supra* note 64.

70. José Rodríguez, et al., *Trends and Dev.: Costa Rica*, in *Transfer Pricing 2024*, CHAMBERS & PARTNERS (Apr. 11, 2024), <https://practiceguides.chambers.com/practice-guides/transfer-pricing-2024/costa-rica/trends-and-developments/O16619> [<https://perma.cc/XG2W-PT2F>].

71. Deloitte, *Costa Rica Highlights 2024* (Jan. 2024), <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-costaricahighlights-2024.pdf> [<https://perma.cc/ZFQ4-5R3W>].

72. WTS Global, *Pillar Two – Country-by-Country Implementation Status* (Feb. 12, 2025), <https://wts.com/wts.com/hot-topics/pillar-two/implementation-status/wtsglobal-pillar-two-country-by-country-implementation.pdf> [<https://perma.cc/UG6Q-BMY3>].

III. EUROPEAN UNION

A. OVERVIEW OF IMPLEMENTATION OF GLOBE RULES

In the European Union (EU), the OECD/IF Global Anti-base Erosion Model Rules (OECD Model Rules)⁷³ have been introduced through Council Directive (EU) 2022/2523 (Pillar Two Directive).⁷⁴ As a result of this directive, member states of the EU (Member States) are obliged to implement the OECD Model Rules in their national law as of December 31, 2023, with the Income Inclusion Rule (IIR) taking effect as of that date and the Undertaxed Profits Rule (UTPR) as of December 31, 2024.⁷⁵

The Pillar Two Directive largely aligns with the OECD Model Rules but contains some EU-specific deviations to ensure compliance with EU treaties.⁷⁶ The preamble to the Pillar Two Directive also contains several specific references to the role of (new) OECD Commentary, highlighting its role as a source of illustration and interpretation in the application of the Pillar Two Directive.⁷⁷

One of the main deviations from the OECD Model Rules is that the Pillar Two Directive applies not only to cross-border multinational enterprises (MNE Groups) but also to large-scale domestic groups.⁷⁸ This was done to avoid the risk of discrimination between domestic and cross-border situations and to ensure compatibility with primary EU law.⁷⁹ Additionally, the Pillar Two Directive allows Member States with twelve or fewer ultimate parent entities of in-scope groups to delay the application of the IIR and UTPR for six years.⁸⁰ Five Member States—Estonia, Latvia, Lithuania, Malta, and Slovakia—have opted for this election.⁸¹

Several Member States did not meet the required implementation date of December 31, 2023, prompting the European Commission to institute an infringement proceeding against Spain, Cyprus, Poland, and Portugal.⁸² These jurisdictions eventually all implemented Pillar Two before the end of 2024 with retroactive

73. Org. Econ. Coop. and Dev. [OECD], *Tax Challenges Arising from the Digitalisation of the Econ. – Global Anti-Base Erosion Model Rules (Pillar Two)*, OECD/G20 Inclusive Framework on BEPS (Dec. 2021), <https://www.oecd.org/en/topics/sub-issues/global-minimum-tax/global-anti-base-erosion-model-rules-pillar-two.html#rules> [https://perma.cc/4BPK-6SJF].

74. Council Directive 2022/2523, 2022 O.J. (L 328) 1 (EU).

75. *Id.* at art. 56.

76. *Id.* at pmbl. para. 33.

77. *Id.* at pmbl. paras. 22, 24.

78. *Id.* at pmbl. para.6.

79. *Id.*

80. Council Directive 2022/2523, 2022 O.J. (L 328) 1, art. 50(1) (EU).

81. Eur. Comm'n Notice, *Election to Delay Application of the IIR and UTPR under Article 50 of the Pillar Two Directive*, (C/2023/1536), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C_202301536 [https://perma.cc/74AN-D294].

82. Press Release, Eur. Comm'n, *The Commission Decides to Refer Spain, Cyprus, Poland, and Portugal to the Ct. of J. of the European Union for Failing to Notify Measures Transposing into Nat'l L. the Council Directive (EU) 2022/2523 (Pillar Two Directive)* (Oct. 3, 2024) (IP/24/4884), https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_24_4884/IP_24_4884_EN.pdf. [https://perma.cc/2HZV-8676].

effect from the beginning of 2024 in order to comply with their obligations from the directive.⁸³

B. DEVELOPMENTS DURING 2024

In 2024, most MNE Groups in the EU faced the Pillar Two Directive for the first time and had to consider its rules when determining their tax positions.⁸⁴ While the OECD/IF intended that the OECD Model Rules would be implemented globally (given the agreement among over 140 jurisdictions), the EU is currently moving ahead of the other large economies. There is currently no indication that the United States and China will follow the EU in this respect, leading to questions on the competitiveness of European companies in the global economy.⁸⁵

Additionally, the release of new OECD/IF Administrative Guidance⁸⁶ after passage of the Pillar Two Directive raises new challenges. The Member States passed the Pillar Two Directive at the end of 2022 and therefore did not directly take Administrative Guidance released afterwards into account.⁸⁷ This raises questions as to what extent new Administrative Guidance can automatically be applied in the EU, or whether that requires changes to the local law. Furthermore, while a specific procedure is included in the Pillar Two Directive for the implementation of Safe Harbours,⁸⁸ it is unclear to what extent the Pillar Two Directive allows Member States to implement other types of guidance that deviate from the Pillar Two Directive. In any case, the differences among national legislations within the EU provide a challenge to in-scope MNE Groups to determine which set of rules is relevant when determining the impact of Pillar Two.⁸⁹

Another important aspect of Pillar Two is the development of the compliance process. The OECD/IF is working on the development of a Multilateral Competent Authority Agreement on the Exchange of GloBE Information Returns,⁹⁰ but the European Commission once again moved forward in 2024 and released a proposal for an amendment to the Directive on Administrative Cooperation (DAC) within the EU, referred to as “DAC9”, which was approved by the European

83. See *id.*

84. See generally *id.*

85. See, e.g., *Answers to Questions in Parliament About Tax Structures*, DUTCH STATE SEC’Y OF FIN. (Aug. 27, 2024), <https://www.rijksoverheid.nl/documenten/kamerstukken/2024/08/27/kamerbrief-inzake-schriftelijk-overleg-over-inzake-belastingconstructies> [<https://perma.cc/K29S-VG9F>].

86. See ORG. ECON. COOP. & DEV., *Challenges Arising from the Digitalisation of the Econ. – Admin. Guidance on the Global AntiBase Erosion Model Rules (Pillar Two)* (2024), <https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/administrative-guidance-global-anti-base-erosion-rules-pillar-two-june-2024.pdf> [<https://perma.cc/JTE9-XDMQ>].

87. See *id.*

88. Council Directive 2022/2523, art. 32, 2022 O.J. (L 328) 1 (EU).

89. *Pillar Two – State of Play of Domestic Implementation in the EU*, KPMG (2024), <https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2024/01/etf-535-pillar-two-state-of-play-of-domestic-implementation-in-the-eu.pdf> [<https://perma.cc/M8R5-772K>] (last visited Mar. 21, 2025).

90. OECD Releases New Documents on GloBE Information Return, GLOB. TAX NEWS (Jan. 21, 2025), <https://globaltaxnews.ey.com/news/2025-0289-oecd-releases-new-documents-on-globe-information-return> [<https://perma.cc/R7MD-A5DU>].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

150 THE YEAR IN REVIEW

[VOL. 59]

Council in April 2025.⁹¹ This amendment aims to facilitate the filing and exchange of Pillar Two-related information centrally within the EU.⁹² For the exchange of information with third countries, Member States will still need to sign appropriate international agreements as required under the Pillar Two Directive.⁹³

Given the widespread criticism of the Pillar Two project, it should be no surprise that legal challenges also arose in 2024.⁹⁴ A number of shipping companies have challenged the validity of the Pillar Two Directive directly before the Court of Justice of the EU (CJEU).⁹⁵ They argue that the rules for the International Shipping Exclusion conflict with their EU approved, tonnage tax regimes.⁹⁶ The CJEU in first instance rejected these claims based on standing, but this ruling has been appealed.⁹⁷ The outcome of this case remains uncertain.⁹⁸

In addition, a challenge has been filed before the Belgian Constitutional Court claiming that the implementation of the Pillar Two Directive in Belgium, in particular the UTPR, conflicts with the Belgian constitution.⁹⁹ Belgium is one of the jurisdictions that allows individuals (including legal persons) to challenge laws directly before the constitutional court.¹⁰⁰ Given that the challenged Belgian law is based on the Pillar Two Directive, the Constitutional Court may raise preliminary questions with the CJEU. Although this is in principle a Belgian domestic procedure, this may have effect on the UTPR throughout the EU.¹⁰¹

91. Directorate-General for Taxation and Customs Union, *Admin. Coop. in Taxation – Council Reaches Political Agreement on DAC9*, EUR. COMM’N (Mar. 11, 2025), <https://taxation-customs.ec.europa.eu/news/administrative-cooperation-taxation-council-reaches-political-agreement-dac9-2025-03-11> [<https://perma.cc/8ZCV-WXCT>].

92. See *id.*

93. Andrea Ben-Yosef, *EU Member States Reach Political Agreement on DAC9*, EY (Mar. 20, 2025), <https://taxnews.ey.com/news/2025-0725-eu-member-states-reach-political-agreement-on-dac9> [<https://perma.cc/22T5-6HJM>].

94. See generally Maarten de Wilde, *On Pillar 2 Controversy and Trust*, WOLTERS KLUWER (Jun. 11, 2024), <https://kluwertaxblog.com/2024/06/11/on-pillar-2-controversy-and-trust/> [<https://perma.cc/7655-EZUZ>].

95. See generally T-143/23, *Fugro NV v. Council*, (Dec. 15, 2023), <https://curia.europa.eu/juris/document/document.jsf?text=&docid=280825&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=12038085> [<https://perma.cc/KWQ8-BK9C>].

96. *Id.*

97. C-146/24 P, *Fugro NV v. Council*, (Feb. 23, 2024), <https://eur-lex.europa.eu/eli/C/2024/2737/oj/eng> [<https://perma.cc/ZW4S-2PVM>].

98. Angelika Xygka, *Fugro v. Council: The Story of a Taxpayer “Throwing Down the Glove” at the Minimum Taxation Directive*, IBFD (May 28, 2024), <https://www.ibfd.org/sites/default/files/2024-05/etf-3-fugro-in-template.pdf> [<https://perma.cc/9EYN-P3VA>].

99. Pie Geelen et al., *Legality of Pillar 2 Undertaxed Payment Rule Challenged in Belgian Constitutional Court*, DLA PIPER (Aug. 1, 2024), <https://www.dlapiper.com/en-us/insights/publications/2024/07/legality-of-pillar-2-undertaxed-payment-rule-challenged-in-belgium-court> [<https://perma.cc/7VGG-S8CL>].

100. *The Constitutional Court of Belgium*, CONST. CT. OF BELG. (2014), <https://www.const-court.be/public/brbr/e/brbr-2014-001e.pdf> [<https://perma.cc/FBC5-LDA4>].

101. Stephanie Soong, *U.S. Business Group’s Belgian UTPR Challenge Gains Traction*, TAX NOTES INT’L (Oct. 17, 2024), <https://www.taxnotes.com/> [<https://perma.cc/NXE5-JQNX>].

C. WHAT'S NEXT?

After the first year of the GloBE Rules, new challenges will arise during 2025 with the expected release of further OECD/IF Administrative Guidance, including anti-abuse rules and the UTPR coming into effect.¹⁰²

While the IIR is somewhat similar to existing foreign CFC regimes and the US GILTI system, the unprecedented mechanics of the UTPR will bring new challenges.¹⁰³ For example, the income of each low-taxed subsidiary of (e.g.) a U.S.-based MNE Group may become subject to tax in a number of different jurisdictions.¹⁰⁴ This also leads to various compliance obligations that would need to be fulfilled in each UTPR jurisdiction and a risk of disputes between the various UTPR countries.¹⁰⁵

It may be worthwhile for US MNE Groups to explore a holding structure with all its low-taxed subsidiaries held by an EU based holding company that is subject to the IIR.¹⁰⁶ While the risk on top-up tax would remain largely the same, this would in any case provide certainty where top-up tax should be paid, a reduction of the compliance burden and a lower risk of disputes on the correctness of the top-up tax calculation.¹⁰⁷ Setting up such a structure also requires consideration of other tax aspects, such as the application of participation exemption regimes and controlled foreign company rules.¹⁰⁸

Overall, the EU keeps moving forward with the Pillar Two project, but large challenges remain, both for the Member States and the MNE Groups subject to these rules.¹⁰⁹

IV. Puerto Rico

Although Puerto Rico is a U.S. territory, it is considered a foreign jurisdiction for U.S. federal income tax purposes.¹¹⁰ This treatment has given it an opportunity to attract investment through the design of tax incentive packages—the highlight of which has consistently been low-income tax rates ranging from zero to eight

102. Stephanie Soong, *OECD Framework Discussing Permanent Pillar Two Safe Harbors*, TAX NOTES INT'L (Oct. 31, 2024), <https://www.taxnotes.com/tax> [<https://perma.cc/V38D-UXPQ>].

103. Jinyan Li, *Introducing a Global Minimum Tax (Pillar Two) in Canada: Some Knowns and Unknowns*, 71 CAN. TAX J. 103, 111 (2023).

104. See generally Martin Baumgartner, *BEPS Pillar II: What are the Impacts on M&A Transactions*, EY (Jul. 27, 2023), https://www.ey.com/en_ch/insights/tax/beps-pillar-ii-what-are-the-impacts-on-m-a-transactions [<https://perma.cc/4G9G-DTKP>].

105. See generally *id.*

106. See generally OECD, *supra* note 86, at 1-15.

107. See *id.* at 38-41.

108. See *id.* at 28-29.

109. *What Does 2025 Hold for the Global Minimum Income Tax (Pillar Two)?*, A&O SHEARMAN (Jan. 15, 2025), <https://www.aoshearman.com/en/insights/what-does-2025-hold-for-the-global-minimum-tax-pillar-two> [<https://perma.cc/6XXX-RGAY>].

110. I.R.C. § 1107(a)(4), (5), (9) (1986).

percent.¹¹¹ Since the late 1940s, Puerto Rico has offered tax incentives with legislation setting the legal framework for those incentives ultimately reflected in an official document called a tax exemption grant or decree.¹¹² A tax exemption grant or decree is a contract between the Government of Puerto Rico and the taxpayer with local operations covered by the same (Exempt Taxpayers).¹¹³

Many Exempt Taxpayers are part of multinational entity groups (MNE Groups) meeting the criteria to be impacted by the Pillar Two GloBE Rules.¹¹⁴ As a result, the implementation of such rules in jurisdictions relevant to these MNE Groups has a direct impact on the Puerto Rico operations of Exempt Taxpayers that are members of such groups and the Puerto Rico economic development program in general.¹¹⁵

On June 30, 2022, Puerto Rico enacted Act 52.¹¹⁶ Among other things, Act 52 gave Exempt Taxpayers the option to irrevocably elect being subject to a tax regime pursuant to which they would pay income taxes at a rate of 10.5% in lieu of the foreign affiliates of the Exempt Taxpayer's MNE Group paying a four percent excise tax on certain acquisitions of personal property manufactured in Puerto Rico or Puerto Rico manufacturing services (Election).¹¹⁷ Act 52 could be seen as Puerto Rico's first attempt to bridge the gap between the low income tax rates applicable to Exempt Taxpayers and Pillar Two's fifteen percent global minimum tax.¹¹⁸ Pursuant to provisions incorporated by Act 52 in relevant tax incentives legislation, should the United States increase GILTI to fifteen percent, the income tax rate of Exempt Taxpayers who have made an Election would automatically increase from 10.5% to 15%.¹¹⁹ Act 52, however, fell short of properly positioning Puerto Rico as a jurisdiction able to accommodate Exempt Taxpayers' Pillar Two GloBE issues.¹²⁰

Since the enactment of Act 52, Exempt Taxpayers, private sector organizations, and advisors have been developing a plan for Puerto Rico to effectively manage Pillar Two issues, all while maintaining and continuing to attract investment by

111. Manuel Zambrana, *P.R.'s Act 20 and Act 22—Key Tax Benefits*, DLA PIPER (Aug. 3, 2019), <https://www.dlapiper.com/es-pr/insights/publications/2016/08/puerto-ricos-act-20-and-act-22> [<https://perma.cc/H2RU-8GB5>].

112. Act 184, 13 L.P.R.A. §§ 10001-10011 (1948) (P.R.).

113. Act 60-2019, 13 L.P.R.A. § 48523 (2019) (P.R.).

114. *Global Anti-Base Erosion Model Rules (Pillar Two)* 1-2, OECD (Jun. 2024), <https://perma.cc/NGM5-QBNH>.

115. See generally DEP'T. OF TREAS., *Public Consultation on the Implementation of the Pillar Two GloBE Rules in P.R.* (2023).

116. *P.R.'s Act 52 of 30 June 2022 Amending Various Tax Provisions Analyzed*, EY (Aug. 26, 2022), <https://perma.cc/GD4J-6G48>.

117. See Act 135-1997, 13 L.P.R.A. § 3A (1997) (P.R.); Act 73-2008, 13 L.P.R.A. § 3A (2008) (P.R.); Act 60-2019, *supra* note 113, at § 2062.01(a)(3).

118. Alan Cole, *Puerto Rican Competitiveness and Pillar Two*, TAX FDN. (Jul. 11, 2024), <https://perma.cc/K58F-HU58>.

119. See Act 135-1997, § 3A(a)(1)(B); Act 73-2008, § 3A(a)(1)(B); Act 60-2019, § 2062.01(a)(3)(ii).

120. See generally Cole, *supra* note 118.

taxpayers that are part of MNE Groups impacted by Pillar Two Rules.¹²¹ This resulted in the 2023 filing and approval in mid-2024 by the Puerto Rico House of Representatives of House Bills Nos. 1908 and 1574 (Proposed Legislation), which contemplated the enactment of a covered tax and several qualified refundable tax credits.¹²² The Puerto Rico Treasury Department (Treasury) did not endorse either bill, nor did the Puerto Rico Senate consider them.¹²³

Proposed Legislation included the term “GloBE Income” and defined it by reference to the meaning ascribed to the term in Article 3.1.1 of the Pillar Two Model Rules, as interpreted in official guidance from the OECD from time to time, and subject to certain adjustments resulting from the refundable tax credits framework set forth in the legislation.¹²⁴ Like Act 52, the Proposed Legislation set forth a tax regime that was elective in nature, recognizing the contractual nature of tax grants.¹²⁵ Pursuant to this regime, Exempt Taxpayers impacted by the implementation of Pillar Two GloBE Rules in jurisdiction(s) relevant to their MNE Group could elect to participate in the new regime, including the payment of a fifteen percent “top-up” tax on Puerto Rican operations to Puerto Rico, and be eligible to receive certain refundable tax credit, among other standard Exempt Taxpayer benefits.¹²⁶

The refundable tax credits were intended to foster economic development in Puerto Rico through local job creation, operational continuation, and investment.¹²⁷ These credits were designed to be considered qualified refundable tax credits pursuant to the Pillar Two Model Rules and related OECD guidance.¹²⁸ Among the available credits were a credit for either substantial employment, single operation with a high concentration risk or single operations with high impact on local budget, certain revenue-based credits, credits based on specified investment in Puerto Rico, including research and development activities and the purchase of products manufactured in Puerto Rico, as well as credits granted at the discretion of the Secretary of the Department of Economic Development and Commerce (DEDC).¹²⁹

On September 25, 2024, Treasury opened a public consultation process to determine a path forward for the possible implementation of GloBE Rules in Puerto

121. See DEP’T. OF TREAS., *supra* note 115, at 1-5; OECD, *supra* note 86, at 27-29.

122. *Tax Update: the Puerto Rican Treas. Dep’t Opens a Consultation Process on Pillar Two*, REICHARD & ESCALERA (Sept. 26, 2024), <https://reichardescalera.com/wp-content/uploads/2024/09/Tax-Update-Process-on-Pillar-Two.pdf> [<https://perma.cc/8WLN-Z3ZF>].

123. *Id.*

124. H.B. 1908, 6th Sess. § 1 (2023) (P.R.); H.B. 1574, 6th Sess. § 1 (2023) (P.R.).

125. See H.B. 1908, *supra* note 124, at Exposición de Motivos [Statement of Reasons]; H.B. 1574, *supra* note 124, at Exposición de Motivos [Statement of Reasons].

126. H.B. 1908, *supra* note 124, at § 3; H.B. 1574, *supra* note 124, at § 3.

127. Omar Mues, Isabel Hernández, Francisco Luis, *The Ins and Outs of P.R. Tax Credits as a Tax Savings Tool*, KEVANE GRANT THORNTON (Jun. 29, 2023), <https://www.granthornton.pr/insights/kevane-grant-thornton/articles/06.29.2023-The-Ins-and-Outs-of-Puerto-Rico-Tax-Credits-as-a-Tax-Savings-Tool/> [<https://perma.cc/NCM7-XVWF>].

128. Lee Hadnum, *Pillar Two: Qualified Refundable Tax Credits*, OECD PILLARS, <https://oecd-pillars.com/pillar-tab/qualified-refundable-tax-credits/> [<https://perma.cc/FXL5-M7SA>] (last visited Mar. 28, 2025).

129. H.B. 1908, *supra* note 124, at § 4; H.B. 1574, *supra* note 124, at § 4.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

154 THE YEAR IN REVIEW

[VOL. 59]

Rico (Public Consultation).¹³⁰ Through this process, Treasury sought additional feedback from stakeholders, private sector organizations, advisors, academics, and the public in general on the impact of the proposed implementation.¹³¹ As stated in the Public Consultation document, Treasury is considering the following principles as part of the process:¹³²

- 1) making Puerto Rico a competitive destination for foreign investment;
- 2) safeguarding Puerto Rico's taxing rights by ensuring that if domestic profits are taxed somewhere in the world, they be taxed in Puerto Rico;
- 3) complying with international standards such as those reflected in the GloBE Rules;
- 4) establishing a long-term solution that provides certainty to taxpayers and the government; and
- 5) complying with the neutrality principle under the Puerto Rico Oversight, Management, and Economic Stability Act.¹³³

The Public Consultation document also states that “[e]mphasis is given to exploring a QDMTT [Qualifying Domestic Minimum Top-up Tax] or an alternative minimum tax in its different forms and other tax changes to Puerto Rico's tax legislation.”¹³⁴

The Public Consultation's comment period closed on October 10, 2024, and, as of November 2024, Treasury was actively working alongside the DEDC and external advisors to both agencies to draft proposed legislation consistent with the principles outlined in the Public Consultation document and considering comments received as part of the process.¹³⁵ A long road remains for Puerto Rico to be adequately prepared for the implementation of legislation consistent with Pillar Two GloBE Rules—if they are to be implemented at all. But it is evident that Puerto Rico must act quickly and shift from what has been the emphasis of its tax incentives packages—tax rates lower than fifteen percent—to other types of incentives that will allow it to preserve its current tax base and continue to be a competitive player capable of attracting new investment.¹³⁶

130. Press Release, *The Dep't of Treas. Opens a Public Consultation on the Implementation of the Global Minimum Tax (Pillar II)*, DEPARTAMENTO DE HACIENDA DE P. R. (P.R. Dep't. of Treas.) (Sept. 25, 2024), <https://hacienda.pr.gov/sobre-hacienda/sala-de-prensa-virtual/comunicados-de-prensa/departamento-de-hacienda-abre-consulta-publica-sobre-la-implementacion-del-impuesto-minimo-global-pilar-2> [<https://perma.cc/9S23-KQH5>]; see DEP'T. OF TREAS., *supra* note 115.

131. See generally DEP'T. OF TREAS., *supra* note 115.

132. *Id.* at 6.

133. See *id.*

134. *Id.*

135. See *id.* at 5.

136. See *id.*

International Art and Cultural Heritage Law

KATE FITZ GIBBON¹

This Article discusses significant legal developments in art and cultural heritage law during 2024.

I. Major Changes to the Native American Graves Protection and Repatriation Act Regulations

*These regulations clarify and improve upon the systematic processes for the disposition or repatriation of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony. These regulations provide a step-by-step roadmap with specific timelines for museums and Federal agencies to facilitate disposition or repatriation. Throughout these systematic processes, museums and Federal agencies must defer to the Native American traditional knowledge of lineal descendants, Indian Tribes, and Native Hawaiian organizations.*²

Congress passed the Native American Graves Protection and Repatriation Act (NAGPRA), in 1990, taking a significant step forward in recognizing the rights of Native American, Alaskan, and Hawaiian communities.³ The law gave lineal descendants and Native communities legal rights over both human remains and cultural objects excavated or discovered on Federal or tribal lands.⁴ The law required agencies and institutions to inventory human remains and cultural objects and to notify the relevant tribes to facilitate claims for their return.⁵ In addition, the legislation created the NAGPRA Committee under the U.S. Department of the Interior (DOI), which was charged with monitoring the law's implementation, and consulting on the development of regulations.⁶

Recent demands for sweeping regulatory changes to NAGPRA were due in part to Native American tribes' frustration at the delay in returning all human remains, thirty years after NAGPRA's passage.⁷ In years 2013 and 2014, France's auction of

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2. Summary of the Final Rule. Native American Graves Protection and Repatriation Act Systematic Processes: Disposition or Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony, 88 Fed. Reg. 86452 (Dec. 13, 2023) (codified at 43 C.F.R. § 10).

3. See *id.*; see generally 25 U.S.C. § 3001 (1990).

4. 43 C.F.R. 10.1 (2023); 25 U.S.C. § 3002.

5. 25 U.S.C. § 3003 (1990).

6. *Id.* § 3006.

7. See 43 C.F.R. § 10.

masks and shields which were identified as sacred items prompted public demonstrations and demands to prohibit the export of Native American cultural artifacts.⁸ The Association on American Indian Affairs, a non-profit organization promoting Native American rights, led a campaign calling for blanket repatriation and granting tribes the right to approve the transfer of artifacts from private hands, including legally owned objects.⁹ Repatriation was linked to Native sovereignty and was promoted as essential for the healing of damaged communities.¹⁰

Responding to social and political pressure, the DOI incorporated changes to NAGPRA that explicitly recognized and deferred to Native American beliefs and traditions.¹¹ New regulations were published on December 13, 2023, and came into effect January 12, 2024.¹²

II. Objects and ‘Ancestors’ Returned under NAGPRA

Congress intended NAGPRA to ensure the return of hundreds of thousands of Native American, Native Alaskan, and Hawaiian human remains collected during the 18th and 19th centuries, sacred artifacts removed or given up during Christianization or repression of Native religions, and communally owned objects.¹³ Timelines were established and institutions that failed to complete inventories or notify the DOI were subject to civil penalties.¹⁴

Despite notable increases in the rate of return of culturally identified human remains—known as “ancestors” among tribes—educational institutions, museums, and federal repositories still held large numbers of Native remains or partial remains as of 2020.¹⁵

The National Park Service reported that, between 1990 and 2020, 91.51% of culturally affiliated human remains had completed the NAGPRA process.¹⁶ Over 1.78 million associated funerary objects found with or near burials had been transferred along with human remains, as well as more than 332,000 unassociated funerary objects, and about 21,000 cultural objects.¹⁷

Of the 96,000 human remains whose disposition had still not been completed by 2023, 90,000 lacked cultural identification that met the prior regulatory

8. CARSTEN STAHN, *CONFRONTING COLONIAL OBJECTS: HISTORIES, LEGALITIES, AND ACCESS TO CULTURE* 345, 402-406 (2023). For more on how these demands took legislative form, see *Safeguard Tribal Objects of Patrimony Act of 2021*, 25 U.S.C. § 3071.

9. *Repatriation*, ASS’N ON AM. INDIAN AFFAIRS, <https://www.indian-affairs.org/repatriation.html> [<https://perma.cc/YPX7-QFDX>].

10. 43 C.F.R. § 10.

11. *Id.*

12. *Id.*

13. *Id.*

14. See 43 C.F.R. §10.11.

15. See Kate Fitz Gibbon, *The New NAGPRA: “Traditional Knowledge” In, Artifacts Out*, CULTURAL PROP. NEWS (Feb. 12, 2024), <https://culturalpropertynews.org/the-new-nagpra-traditional-knowledge-in-artifacts-out/> [<https://perma.cc/F2GT-8HRS>].

16. NAGPRA Rev. Comm. Ann. Rep. 2020-2021, at 13.

17. *Id.*

standards.¹⁸ The current regulations do not require scientific study for identifying culturally unaffiliated remains, which would enable institutions holding them to return them to the tribal groups to which they are likely related.¹⁹ The 2023 NAGPRA rules “allow five years for museums and Federal agencies to consult and update inventories of human remains and associated funerary objects.”²⁰

III. The Definition of ‘Institutions Receiving Federal Funds’ Recontextualized

NAGPRA has focused primarily on the process for claims from collections held by U.S. federal agencies, public museums, and educational institutions.²¹ But other institutions have recently come under scrutiny.²² In 2018, objects from Northwest Coast tribes were discovered in a box stored in the Medford, Massachusetts Public Library for over 100 years.²³ They had been donated in 1880 by James G. Swan, a Medford resident who served as a U.S. Indian Agent and Ethnographer in Washington State and who also collected objects for the Smithsonian.²⁴ The library intended to auction them to help fund a new library building.²⁵ Medford city officials, responding to assertions that the objects might have been purchased under duress, determined that the library could be required to inventory the objects and submit them to the NAGPRA Committee because the library received funding from the City of Medford, which in turn received federal funding for unrelated projects.²⁶

The 2023 regulations do not directly address the question of whether an associated entity of a city that receives federal funding for other purposes is subject to NAGPRA.²⁷ The DOI’s comment regarding whether an organization receives

18. MARK K. DESANTIS & NIK TAYLOR, CONG. RSCH. SERV., IF 12523, REPATRIATION OF NATIVE AM. REMAINS AND CULTURAL ITEMS: REQUIREMENTS FOR AGENCIES AND INST. (2024).

19. Native American Graves Protection and Repatriation Act Systematic Processes: Disposition or Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony, 88 Fed. Reg. 86452, 86464 (Dec. 13, 2023) (codified at 43 C.F.R. § 10).

20. See 43 C.F.R. § 10.10(d)(2).

21. 25 U.S.C. §§ 3003(a), 3004(a); see 43 C.F.R. § 10.7.

22. See, e.g., Miranda Wilson, *Medford City Solicitor: Native American Auction Illegal Under Federal Law*, MEDFORD TRANSCRIPT (November 20, 2018), <https://web.archive.org/web/20210-228145259/https://medford.wickedlocal.com/news/20181120/medford-city-solicitor-native-american-auction-illegal-under-federal-law> [https://perma.cc/QLU9-5WFT].

23. *Id.*

24. *Native Artifacts from PNW to go into Storage After Massachusetts Auction Canceled*, SEATTLEPI (Nov. 21, 2018), <https://www.seattlepi.com/seattlenews/article/PNW-Native-artifacts-auction-cancelled-Medford-13409799.php> [https://perma.cc/K4QH-K29Y]; James G. Swan, *The Northwest Coast, CTR. FOR THE STUDY OF THE PAC. NW.*, <https://www.washington.edu/u-wired/out-reach/cspn/Website/Classroom%20Materials/Reading%20the%20Region/Discovering%20the%20Region/Commentary/11.html> [https://perma.cc/EYS4-WH9V] (last visited Feb. 26, 2025).

25. Wilson, *supra* note 22.

26. *Id.*

27. See 43 C.F.R. § 10.

federal funding was that “a case-by-case determination as to the nature of such funds is outside the scope of this regulatory action.”²⁸ It recommended seeking technical assistance from the National NAGPRA Program.²⁹

Under the new NAGPRA rules, the phrase “receives federal funds” includes any institution or State or local government agency (including an institution of higher learning) that “directly or indirectly receives Federal financial assistance after November 16, 1990, including any grant; cooperative agreement; loan; contract; use of Federal facilities, property, or services; or other arrangement involving the transfer of anything of value for a public purpose authorized by a law of the United States Government.”³⁰

IV. Deferring to “Traditional Knowledge”: A Change to NAGPRA’s Purpose

The most fundamental change to NAGPRA regulations is expressed in its newly written purpose, which gives explicit recognition and deference to “Native American traditional knowledge.”³¹

“Consistent with the Act, these regulations require deference to the Native American traditional knowledge of lineal descendants, Indian Tribes, and Native Hawaiian organizations.”³²

The 2023 NAGPRA regulations interpret deference in many ways—for example, the regulations require free, prior, and informed consent by tribes before exhibition of, access to, or research on human remains or cultural items.³³ Native American tribal governments, Native Hawaiian Organizations, and Alaska Native Corporations must grant permission before museums can research or exhibit cultural items in their collections.³⁴ The DOI maintains online lists of current contacts for Indian Tribes and Tribal Historic Preservation Officers.³⁵

Some Native groups have historically experienced unethical research practices.³⁶ Thus, the DOI comments state that, under NAGPRA, “full knowledge and consent” considers the history of Indian Country and recognizes that the phrase

28. Native American Graves Protection and Repatriation Act Systematic Processes: Disposition or Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony, 88 Fed. Reg. 86452, 86480 (Dec. 13, 2023) (codified at 43 C.F.R. § 10).

29. *Id.*

30. *Id.* at 86521.

31. 43 C.F.R. § 10.1(a)(3).

32. *Id.*

33. *Id.* § 10.1(d)(3).

34. *Id.*

35. Contract, THE NATIONAL NAGPRA PROGRAM, <https://grantsdev.cr.nps.gov/Nagpra-Public/Home/Contact> [<https://perma.cc/KJ7K-9QJ6>] (last visited Feb. 26, 2025).

36. JULIE A. BEANS ET AL., CMTY. PROTS. IN AM. INDIAN & AL. NATIVE PARTICIPATORY RSCH.—A SCOPING R. 2 (2019).

does not include “consent” given under duress or because of bribery, blackmail, fraud, misrepresentation, or duplicity on the part of the recipient.³⁷

The “deference” provision also enables expanded repatriation claims to objects deemed “sacred” or inalienable “cultural patrimony” based on tribal traditions rather than on historical or scientific evidence, including ancient objects from earlier societies.³⁸ The new regulations specifically recognize that direct descendants of the original owners have a say in how objects are handled and displayed.³⁹ The DOI comments state that these changes are not intended to usurp decision-making by museums,⁴⁰ while at the same time they give Native traditions and beliefs primacy:

We have not defined “deference” in these regulations. . . . The term should be understood to have a standard, dictionary definition: “respect and esteem due a superior or an elder; also affected or ingratiating regard for another’s wishes” The requirement for deference is not intended to remove the decision-making responsibility of a museum or Federal agency . . . but is intended to require that a museum or Federal agency recognize that lineal descendants, Indian Tribes, and NHOs are the primary experts on their cultural heritage.⁴¹

Further:

Native American traditional knowledge means knowledge, philosophies, beliefs, traditions, skills, and practices that are developed, embedded, and often safeguarded by or confidential to individual Native Americans, Indian Tribes, or the Native Hawaiian Community. Native American traditional knowledge contextualizes relationships between and among people, the places they inhabit, and the broader world around them, covering a wide variety of information, including, but not limited to, cultural, ecological, linguistic, religious, scientific, societal, spiritual, and technical knowledge. Native American traditional knowledge may be, but is not required to be, developed, sustained, and passed through time, often forming part of a cultural or spiritual identity. Native American traditional knowledge is expert opinion.⁴²

Traditional knowledge is now key to determining whether a tribe can claim an object for repatriation under NAGPRA, but this traditional knowledge need not have been held, as one might suppose, traditionally.⁴³ It can be new or relatively

37. Native American Graves Protection and Repatriation Act Systematic Processes: Disposition or Repatriation of Native American Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony, 88 Fed. Reg. 86452, 86475 (Dec. 13, 2023) (codified at 43 C.F.R. § 10).

38. *Id.* at 86459.

39. *Id.* at 86460.

40. *Id.*

41. *Id.* at 86467.

42. 43 C.F.R. § 10.2.

43. *See id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

160 THE YEAR IN REVIEW

[VOL. 59]

newly held: “Native American traditional knowledge may be, but is not required to be, developed, sustained, and passed through time.”⁴⁴

Such open-ended language raises questions about how tribal definitions of “sacred” or “cultural patrimony” have changed in the past or may evolve in the future.⁴⁵ Repatriation claims have included several instances in which purpose-made items for museums were deemed sacred objects.⁴⁶ For example, “184 ‘medicine faces’—False Face masks—[were returned] from the Rochester (New York) Museum & Science Center to the Tonawanda Band of Seneca Indians.”⁴⁷ The repatriation request characterized the masks as both “sacred objects” and “objects of cultural patrimony” even though the Senecas carved the pieces specifically for public exhibition between 1935-1941 while working for the New Deal Works Progress Administration.⁴⁸ Thus, views held by the tribe today superseded the intent of the Native American artists who made the work.⁴⁹

One wonders how this mandated deference can fairly be applied to Hawaiian ‘traditions.’ Hawaii has no permanent ‘tribal’ organizations or established community ownership of ‘inalienable’ property. The Native Hawaiian traditional religion was abolished for all practical purposes by King Kamehameha II in 1819. The Kingdom of Hawaii, a feudal society in which property was held by a ruling elite (ali’i), was itself overthrown by American sugar planters in 1893. Today’s more than 125 Native Hawaiian Organizations are effectively self-designated and federally recognized for 5-year periods only. They encompass a very broad range of social, spiritual, and business organizations without any consistent ‘traditional knowledge.’

For similar reasons, there is no logical entity to go to to obtain full, informed and prior consent to the management, usage or display of Hawaiian materials. Native Hawaiian Organizations are not tribes, and no one organization can speak for all Native Hawaiians. The new regulation does not provide any guidance as to what the consent of Native Hawaiian organizations will look like. Is consent required from all 120 plus organizations, the majority of organizations, a few organizations or just one of them in order to meet this mandate under § 10.1 (d)?

The Act includes Hawaii’s state government’s Office of Hawaiian Affairs as a “Native Hawaiian organization,” but this state office is prevented from being made up exclusively of staff of Native Hawaiian ancestry by a U.S. Supreme Court decision. Will this preeminent Hawaiian Organization be the voice for all Native Hawaiians – and if not, who will?⁵⁰

44. *Id.*

45. Ron McCoy, *Is NAGPRA Irretrievably Broken?*, CULTURAL PROP. NEWS (Dec. 19, 2018), <https://culturalpropertynews.org/is-nagpra-irretrievably-broken/> [https://perma.cc/8W7N-WRMB].

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. Gibbon, *supra* note 15.

V. What “cultural items” are subject to repatriation under NAGPRA?

Under the 2023 regulations, the NAGPRA definition of a “cultural item” has been redefined as follows: “[c]ultural items means a funerary object, sacred object, or object of cultural patrimony according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.”⁵¹ To qualify as “cultural patrimony” an object must have “ongoing historical, traditional, or cultural importance central to the Native American group or culture itself,” as opposed to being “property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual . . . [and which must be] considered inalienable by such Native American group at the time the object was separated from the group.”⁵²

Notably, the acceptable “evidence” for a claim has dramatically changed.⁵³ The new regulations acknowledge that when NAGPRA was passed, Congress made clear that not all objects could be deemed “sacred” or “cultural patrimony.”⁵⁴ Congress stated in the NAGPRA Senate Report 101-473 (1990) that:

The substitute amendment also includes a revised definition of the term “Native American cultural patrimony.” The Committee received comments from several witnesses regarding the lack of clarity in the original definition of cultural patrimony. These concerns focused primarily on the character of property within traditional Native American societies where property was held by the whole community, not by an individual. It had been suggested that in traditional Native American societies no object could be conveyed by an individual because it was owned by the collective whole. The substitute amendment defines “Native American cultural patrimony” as an object with significant historical, traditional or cultural importance and which is central to the culture of an Indian tribe or to Native Hawaiians. The Committee intends this term to refer to only those items that have such great importance to an Indian tribe or to the Native Hawaiian culture that they cannot be conveyed, appropriated or transferred by an individual member. Objects of Native American cultural patrimony would include items such as Zuni War Gods, the Wampum belts of the Iroquois, and other objects of a similar character and significance to the Indian tribe as a whole.⁵⁵

Congress further provided that:

The Committee received comments regarding the ambiguity surrounding the term “sacred,” in particular when that term is used in reference to Native American religious practices. There has been concern expressed that any object could be imbued with sacredness in the eyes of a Native American, from an ancient pottery shard to an arrowhead. The Committee does not intend this result . . . The term sacred object is an object that was devoted to

51. 43 C.F.R. § 10.2.

52. *Id.*

53. See Gibbon, *supra* note 15.

54. S. Rep. No. 101-473, at 4 (1990).

55. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

162 THE YEAR IN REVIEW

[VOL. 59]

a traditional religious ceremony or ritual when possessed by a Native American and which has religious significance or function in the continued observance or renewal of such ceremony. The Committee intends that a sacred object must not only have been used in a Native American religious ceremony but that the object must also have religious significance. The Committee recognizes that an object such as an altar candle may have a secular function and still be employed in a religious ceremony. The substitute amendment requires that the primary purpose of the object is that the object must be used in a Native American religious ceremony in order to fall within the protections afforded by the bill.⁵⁶

The 2023 regulations confirm that, qualifying as a “sacred object” today

means a specific ceremonial object needed by a traditional religious leader for present day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. While many items might be imbued with sacredness in a culture, this term is specifically limited to an object needed for the observance or renewal of a Native American religious ceremony.⁵⁷

But the DOI comments also state that an object may be deemed a sacred object if, based on Native American traditional knowledge, “the object was ceremonially interred as a traditional Native American religious practice, the object was subsequently disinterred, and today, it is needed by a traditional Native American religious leader to renew the ceremonial interment of the specific object by present-day adherents.”⁵⁸

The definition of funerary objects is expanded to include funerary objects where no human remains have been located.⁵⁹ A funerary object is defined very broadly as an object “reasonably believed to have been placed intentionally with or near human remains.”⁶⁰ The DOI Commentary to the 2023 rule states:

If the location of the related human remains is unknown, the funerary object meets the definition of unassociated funerary object. If cultural affiliation of the unassociated funerary object is reasonably identified by the geographical location where the unassociated funerary object was removed, the unassociated funerary object may satisfy the criteria for repatriation, provided the museum or Federal agency cannot prove it has a right of possession to the unassociated funerary object.⁶¹

56. *Id.*

57. *Id.* at 5.

58. Native American Graves Protection and Repatriation Act Systematic Processes: Disposition or Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony, 88 Fed. Reg. 86452, 86481 (Dec. 13, 2023) (codified at 43 C.F.R. § 10).

59. See 43 C.F.R. § 10.2.

60. *Id.*

61. 88 Fed. Reg. at 86473.

Thus, what is required is a tribe's belief that the object was associated with human remains, not that remains have been found with the object.

VI. Federal and Tribal Lands

Whether an object was found on Indian or federally owned or controlled land—or private land—can determine if it is legally owned under both NAGPRA and the Archaeological Resources Protection Act of 1979.⁶² Definitions may be based on minutiae such as whether private land was ever leased to the federal government or was so leased when an object was found.⁶³ The 2023 rules effectively make “geographical proximity” of a current tribe sufficient to establish an affiliation with an ancient community without defining what distance is meant by geographical proximity.⁶⁴

The new regulations clarify that discoveries and planned excavations require notification between tribal entities and the DOI.⁶⁵ The rules stress that tribes have obligations and authority over actions taken on tribal lands, and the DOI over actions taken on federal lands, whether in response to the discovery of human remains or artifacts or in organizing construction or an archaeological excavation.⁶⁶

VII. How Will ‘Right of Possession’ be Applied to Museum Collections?

Right of possession is defined as possession or control obtained with the voluntary consent of a person or group that had the authority to alienate the object.⁶⁷ The DOI commentary states that it is unlikely that a museum or federal agency will have a right of possession to an object of cultural patrimony under this definition.⁶⁸

“Critics of this position have raised the issue that repatriation under these circumstances may be circumscribed the Takings Clause in the U.S. Constitution.”⁶⁹ A public comment submitted to the NAGPRA Committee objecting to this rule noted that this change to the existing regulations “is being made without a formal review of its Fifth Amendment takings implications under Executive Order 12630 and will ‘create an opportunity for lawsuits to overturn these rules.’”⁷⁰

62. Kate Fitz Gibbon, *A Primer: NAGPRA, ARPA, and the Antiquities Act*, CULTURAL PROP. NEWS (Dec. 19, 2018), <https://culturalpropertynews.org/a-primer-nagpra-arpa-and-the-antiquities-act/> [<https://perma.cc/F9P2-BYHB>].

63. 43 C.F.R. § 10.3; *see Okla. Tax Comm’n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 511 (1991).

64. 43 C.F.R. § 10.3(b)(2).

65. 88 Fed. Reg. at 86490, 86524.

66. *Id.* at 86456.

67. 43 C.F.R. § 10.2.

68. 88 Fed. Reg. at 86502.

69. Gibbon, *supra* note 15.

70. 88 Fed. Reg. at 86505; *see* Exec. Order No. 12630; 3 C.F.R. § 24.8.

VIII. Impact on Museums, Educational Institutions, Donors, and Researchers.

Native American art is the most popular and widely held form of art in the United States.⁷¹ Hundreds of U.S. museums hold contemporary, antique, and ancient objects made by Native peoples.⁷² After publication of the new NAGPRA regulations, visitors to U.S. science, art and natural history museums found galleries closed and vitrines shrouded—some bearing notices that “[t]he artifacts in this case have been removed from view because the Museum does not have consent to display them.”⁷³

The removals and closures were part of museums’ response to the new requirement for explicit permission from the originating tribes for handling, care, and exhibition of objects.⁷⁴ The 2022 proposed rules did not mention requiring consent for exhibition and public display.⁷⁵ On January 26, 2024, the American Museum of Natural History in New York, the largest natural history museum in the world, announced that the museum would close its entire Native American exhibit halls pending compliance with the new rules.⁷⁶ Its director said the museum was “rethinking” its field trips for students in light of the closures.⁷⁷ The Denver Museum of Art removed a display case of ceramics,⁷⁸ the Cleveland Museum of Art covered three of its six cases of Native North American Art,⁷⁹ and the Peabody Museum of Archaeology and Ethnology at Harvard University removed all funerary belongings from exhibition.⁸⁰ Museums noted that the thirty-day period between announcement and the regulations taking effect was insufficient even to determine who needed to be consulted, who had authority to grant permission, or the process to obtain consent.⁸¹

71. See Gibbon, *supra* note 15.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. Julia Jacobs & Zachary Small, *Leading Museums Remove Native Displays Amid New Federal Rules*, N.Y. TIMES (Jan. 26, 2024), <https://www.nytimes.com/2024/01/26/arts/design/american-museum-of-natural-history-nagpra.html> [<https://perma.cc/NBT8-789J>].

77. *Id.*

78. Chandelis Duster & Nicole Chavez, *Museums to Close Exhibits Featuring Native American Artifacts, as New Federal Regulations Take Effect*, CNN (Jan. 26, 2024), <https://www.cnn.com/2024/01/26/us/museums-to-close-exhibits-featuring-native-american-artifacts-as-new-federal-regulations-take-effect/index.html> [<https://perma.cc/GS73-XVSS>].

79. Nadeen Abusada, *Cleveland Museum of Art Conceals Native American Pieces on Display Due to Updated Federal Law*, NEWS 5 CLEVELAND (Jan. 18, 2024), <https://www.news5-cleveland.com/news/local-news/cleveland-museum-of-art-conceals-native-american-pieces-on-display-due-to-updated-federal-law> [<https://perma.cc/5VFJ-DPKT>].

80. Lydialyle Gibson, *Peabody Museum Removes Native American Funerary Objects*, HARV. MAG. (Jan. 30, 2024), <https://www.harvardmagazine.com/2024/01/peabody-museum-removes-native-american-funerary-objects> [<https://perma.cc/3NND-VNUK>].

81. Abusada, *supra* note 79.

Some tribes object to the photography of objects; some want prior publications to be censored or destroyed.⁸² The Detroit Institute of Arts has removed all images of non-contemporary Great Lakes Native American Collections from its online catalog “to evaluate NAGPRA eligibility.”⁸³

IX. Funding for Compliance is Limited

Many museums are concerned that the 2023 regulations require them to meet tightened schedules without providing funding for the work.⁸⁴ Tribes also lack funding for consultation with museums and federal agencies, and the consultation requirements have expanded a hundredfold due to the requirement for permission to access and exhibit objects.⁸⁵ Estimations of the likely costs and time needed for compliance that were submitted by individual institutions and tribes differed widely, but almost all anticipated hardship.⁸⁶

Finally, the new regulations leave many unanswered questions. What if current or future tribal beliefs conflict with tribal perspectives at the time of collection? What process should be followed if a tribe doesn’t respond to requests for consent? What happens to objects if scholarly and public access is denied? It remains to be seen whether these fundamental changes to NAGPRA will benefit or endanger legitimate scholarship, the preservation of the human record, or tribal and public interests.

82. See Gibbon, *supra* note 15.

83. Randiah Camille Green, *Detroit Institute of Arts Works to Return Indigenous Remains and Sacred Objects Amid Federal Law Updates*, DETROIT METRO TIMES (Mar. 18, 2024), <https://www.metrotimes.com/arts/detroit-institute-of-arts-works-to-return-indigenous-remains-and-sacred-objects-amid-federal-law-updates-35747671> [<https://perma.cc/L82LXTVC>].

84. See Duster & Chavez, *supra* note 78.

85. See Native American Graves Protection and Repatriation Act Systematic Processes: Disposition or Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony, 88 Fed. Reg. 86452, 86455, 86509–12 (Dec. 13, 2023) (codified at 43 C.F.R. § 10).

86. *Id.*

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International Criminal Law

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This article reviews significant developments in 2024 involving issues of international criminal law.

I. Gender Apartheid

According to the U.N. Working Group on Discrimination Against Women and Girls, “the crime of gender apartheid” includes “inhumane acts committed within the context of an institutionalized regime of systematic discrimination, oppression, and domination by one group over another or others, based on gender, and committed with the intention of maintaining that regime.”² Some examples of such inhumane acts in countries like Afghanistan³ and Iran⁴ include crimes such as murder, imprisonment, enforced disappearance, torture, and ill-treatment.⁵ Additionally, these acts deny individuals the right to participate in political, social, economic, and cultural life, as well as violate fundamental human rights such as access to

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2. U.N. Human Rights Council, 56th Sess., *Phenomenon of an Institutionalized Sys. of Discrimination, Segregation, Disrespect for Hum. Dignity, & Exclusion of Women and Girls: Rep. of the Special Rapporteur on Situation of Hum. Rights in Afg.*, ¶¶ 89, 95, U.N. Doc. A/HRC/56/25 (May 13, 2024).

3. See *id.* ¶ 2.

4. See SHADI SADR, LIVING AS SECOND-CLASS HUMAN BEINGS: GENDER APARTHEID IN THE ISLAMIC REPUBLIC OF IRAN 9 (2024), <https://www.amnesty.org/en/location/middle-east-and-north-africa/middle-east/iran/report-iran/> [<https://perma.cc/X9EV-ARHS>].

5. Iran 2024, AMNESTY INT’L, <https://www.amnesty.org/en/latest/news/2024/06/gender-apartheid-must-be-recognized-international-law> [<https://perma.cc/9NTA-FXFH>] (last visited Apr. 29, 2025).

education, work, freedom of expression, and assembly.⁶ These abuses are committed to enforce severe gender discrimination, segregation, and exclusion, and to repress dissent and disobedience.⁷

The Taliban's return to power in August 2021, along with their draconian laws erasing women and girls from public life and controlling their private lives, coincided with global discussions on a treaty addressing crimes against humanity.⁸ This has reignited calls to criminalize gender apartheid.⁹ Historically, these demands were first raised by Iranian women after the 1979 revolution, and later by Afghan women during the Taliban's initial rule (1996–2001).¹⁰ Despite extensive discussions to include gender alongside race and religion as grounds for apartheid, the International Law Commission's 1996 Draft Code of Crimes only criminalized racial and religious apartheid.¹¹ Yet, the final criminal statute ultimately excluded religion and recognized only racial apartheid as a crime against humanity—a definition adopted in the U.N.'s Draft Articles on the Prevention and Punishment of Crimes Against Humanity (the Draft Treaty).¹²

The 2024 debates on addressing gender apartheid in international law have centered on two main approaches: the first, strongly supported by U.N. human rights mechanisms¹³ and civil society,¹⁴ advocates for “codification.” This approach seeks to recognize gender apartheid as a new crime against humanity that should be included in the Draft Treaty.¹⁵ The second approach, supported by some lawyers, questions the need for “codification,” arguing that existing gender-specific crimes, such as gender persecution in the Rome Statute and in the Draft Treaty, already provide sufficient legal protections.¹⁶ In advancing this “sufficiency” approach, these advocates believe the issue lies in effective implementation rather than in the

6. See *id.* at 15; see also U.N. Hum. Rts. Council, *supra* note 2, ¶ 72.

7. See generally SADR, *supra* note 4.

8. See *Global: Gender Apartheid Must Be Recognized as a Crime Under International Law*, AMNESTY INT'L (June 17, 2024), <https://www.amnesty.org/en/latest/news/2024/06/gender-apartheid-must-be-recognized-international-law> [<https://perma.cc/9NTA-FXFH>].

9. See *id.*

10. See *id.*

11. See generally YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW (Terry D. Gill eds., 2016).

12. Int'l Law Comm'n, Draft Articles on Prevention and Punishment of Crimes Against Humanity, U.N. Doc. A/74/10, at 3 (2019).

13. See Press Release, Off. of the High Comm'r: Hum. Rts. (OHCHR), Gender Apartheid Must Be Recognised as a Crime Against Humanity, U.N. Experts Say (Feb. 20, 2024), <https://www.ohchr.org/en/press-releases/2024/02/gender-apartheid-must-be-recognised-crime-against-humanity-un-experts-say> [<https://perma.cc/3QZG-ZQ9C>].

14. Patrick Wintour, *Campaign Calls for Gender Apartheid to be Crime Under International Law*, THE GUARDIAN (Mar. 8, 2023), <https://www.theguardian.com/society/2023/mar/08/campaign-calls-for-gender-apartheid-to-be-under-international-law> [<https://perma.cc/DNT8-2TND>].

15. OHCHR, *supra* note 13.

16. See Ahmad Ali Shariati, *Gender Persecution and Gender Apartheid in Afghanistan: Seeking the Appropriate Legal Basis for International Accountability*, EJIL: TALK! (Apr. 10, 2024), <https://www.ejiltalk.org/gender-persecution-and-gender-apartheid-in-afghanistan-seeking-the-appropriate-legal-basis-for-international-accountability> [<https://perma.cc/K8D9-UL7G>].

creation of new crimes.¹⁷ In response to the sufficiency approach, codification advocates argue that existing legal frameworks fail to address the institutionalized and systemic nature of gender apartheid.¹⁸ They point out that gender apartheid is distinct from other international crimes, including gender persecution, due to its specific intent: the “dystopian ambition to maintain an institutionalized regime of systematic oppression and domination, where the under-class is subjugated for the dominant group’s benefit and survival, dehumanized, and cut off from the resources and access needed to overcome their choreographed oppression.”¹⁹

During the April 2024 session of the Sixth (Legal) Committee of the U.N. General Assembly on the Draft Treaty, ten Member States expressed openness to including a new crime of gender apartheid in the proposed text.²⁰ The Sixth Committee will decide in its upcoming October Session whether to advance the draft treaty, which includes the proposed crime of gender apartheid, to a diplomatic conference for negotiations.²¹

Criminalizing gender apartheid should not be solely dependent on the uncertain adoption of the Draft Treaty.²² While including gender apartheid in the treaty could enable prosecution of perpetrators in domestic and international courts, it may not effectively address or eradicate gender apartheid regimes; therefore, this article argues that a third approach is needed to incorporate gender apartheid into international law, reflecting its systemic and institutionalized nature while also diversifying the pathways for achieving it. In this context, the Apartheid Convention²³ may be the most appropriate instrument to address gender-based apartheid alongside racial apartheid.

Given its severity and specific nature, one major international response to South Africa’s apartheid regime was the adoption of the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid (the Apartheid Convention).²⁴ This convention recognizes apartheid as a crime against humanity and provides unprecedented measures to dismantle the system and achieve justice for its victims.²⁵ The Apartheid Convention obliges States Parties not only to

17. See *id.*

18. OHCHR, *supra* note 13.

19. Letter from Atlantic Council, Glob. Just. Ctr. to Distinguished Representatives of Member States of the U.N. (Oct. 5, 2023), <https://endgenderapartheid.today/download/brief/Gender%20Apartheid%20Brief.pdf> [https://perma.cc/F37M-BPFU].

20. See Akila Radhakrishnan & Alyssa Yamamoto, *More States Open to Considering Apartheid for Draft Crimes Against Humanity Treaty*, JUST SEC. (May 24, 2024), <https://www.justsecurity.org/96096/gender-apartheid-crimes-against-humanity-treaty> [https://perma.cc/J4L6-N332].

21. See Leila Nadya Sadat, *A Draft Treaty on Crimes Against Humanity Draws More Engagement from States*, JUST SEC. (May 22, 2024), <https://www.justsecurity.org/95850/crimes-against-humanity-draft-treaty-states-engagement/> [https://perma.cc/645K-75UK].

22. See generally Leila Nadya Sadat, 2023 Klatsky Endowed Lecture in Human Rights: The Forgotten Crime: Forging a Convention for Crimes Against Humanity (October 25, 2023), in LEGAL STUDIES RESEARCH PAPER SERIES PAPER NO. 23-10-01.

23. See G.A. Res. 3068 (XXVIII), International Convention on the Suppression and Punishment of the Crime of Apartheid (Nov. 30, 1973).

24. *Id.*

25. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

170 THE YEAR IN REVIEW

[VOL. 59]

prevent and punish apartheid but also, unlike the Rome Statute and the Draft Treaty, to actively suppress it to end the regime entirely.²⁶ States Parties must adopt legislative, judicial, and administrative measures to prosecute those involved, criminalize related organizations, and report regularly to a U.N. monitoring body.²⁷ These measures, coupled with severe sanctions, significantly impacted South Africa's economy, leading to the regime's agreement to hold democratic elections in 1994, which formally ended apartheid.²⁸ In 1995, the U.N. Commission on Human Rights suspended the monitoring body, noting that "apartheid no longer exists anywhere,"²⁹ a decision that rendered the Apartheid Convention de facto dormant, although it remains legally in force.³⁰

The deteriorating situation of Palestinians and the Gaza conflict have heightened discussions about the crime of apartheid.³¹ During the International Court of Justice (ICJ) proceedings on the occupation of Palestinian territories, sixteen States Parties to the 1973 Apartheid Convention claimed Israel is imposing an apartheid regime on Palestinians.³² While the ICJ's July 2024 advisory opinion did not mention the Apartheid Convention or explicitly use the term "apartheid," its reference to Article 3 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD)—which prohibits racial segregation and apartheid—and its finding that "Israel's legislation and measures constitute a breach" of this article, has fuelled further debate.³³

Furthermore, in May 2024, South Africa ratified the Apartheid Convention, becoming its 110th State Party.³⁴ This development has sparked hopes for reactivating the Apartheid Convention through potential legal action by South Africa against Israel and has led to suggestions for revising the Apartheid Convention, to include changes to its monitoring body.³⁵ According to the Apartheid Convention,

26. *Id.*

27. *Id.*

28. Comm'n on Hum. Rts., Report on the Fifty-First Session, U.N. Doc E/CN.4/1995/176, at 54 (1995).

29. *Id.* at 55.

30. Shadi Sadr, *Adding Gender to Apartheid International Law: But Where?*, JUST SEC. (Sept. 6, 2024), <https://www.justsecurity.org/99039/gender-apartheid-international-law> [<https://perma.cc/WA99-962F>].

31. See Victor Kattan, *The Implications of An ICJ Finding that Israel is Committing the Crime Against Humanity of Apartheid*, JUST SEC. (Mar. 20, 2024), <https://www.justsecurity.org/93403/-the-implications-of-an-icj-finding-that-israel-is-committing-the-crime-against-humanity-of-apartheid-2> [<https://perma.cc/EU3Q-3U39>].

32. See *id.*

33. David Keane, 'Racial Segregation and Apartheid' in the ICJ Palestine Advisory Opinion, EJIL: TALK! (July 31, 2024), <https://www.ejiltalk.org/racial-segregation-and-apartheid-in-the-icj-palestine-advisory-opinion> [<https://perma.cc/4HZ4-ZAUH>].

34. See Gerhard Kemp & Victor Kattan, *The Significance of South Africa's Accession to the 1973 Apartheid Convention and Suggestions for Improving the Treaty Text*, OPINIO JURIS (May 31, 2024), <http://opiniojuris.org/2024/05/31/the-significance-of-south-africas-accession-to-the-1973-apartheid-convention-and-suggestions-for-improving-the-treaty-text> [<https://perma.cc/Z3B2-YCTL>].

35. Kattan, *supra* note 31.

only one State Party can request a revision, and the U.N. General Assembly will decide on the steps to be taken in response.³⁶

If the international community considers reviving the Apartheid Convention to address current and future apartheid regimes, incorporating gender apartheid could be most appropriately addressed in a revised version of the Apartheid Convention or through an additional protocol.³⁷ While the idea of adding gender apartheid might seem tangential or implausible amid the ongoing Israel-Palestine debate, and given the rarity of revising international human rights instruments, it remains crucial.³⁸ As the U.N. Working Group on Discrimination Against Women and Girls notes, “[g]ender apartheid, like racial apartheid, is a State-designed system of coordinated and comprehensive policies and practices intended to oppress and subjugate a particular group because of their identity.”³⁹ To effectively combat and eradicate apartheid in all forms—including gender apartheid—a robust legal framework is essential to address systemic abuses and close the impunity gap, particularly for institutional perpetrators in countries like Afghanistan and Iran.⁴⁰

II. The Maasai of Ngorongoro, Tanzania

Maasai presence in what is now known as Ngorongoro, Tanzania, is not a novelty despite concerted efforts to misrepresent history.⁴¹ Tanzania, like all territories of the world, holds a history of human migration.⁴² Bantu communities either migrated from South or Western Africa as the Nilotic and Cushitic from the north.⁴³ Yet no historian or living person can accurately and honestly profess to know when the Maasai migrated southward to today’s Tanzania.⁴⁴

36. See *id.*

37. See *id.*

38. See *id.*

39. OHCHR, *Draft Articles on Prevention and Punishment of Crimes Against Humanity – Input from the Working Group on Discrimination Against Women and Girls*, 6 (Feb. 19, 2024), https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://digitallibrary.un.org/record/4040408/files/A_HRC_WG.11_40_1-EN.pdf [https://perma.cc/Y6KM-4S2Y].

40. See *id.* at 3.

41. See Joseph Oleshangay, *Sudden Leap into Darkness: The Case of Maasai Exclusion and Marginalization in Ngorongoro, Northern Tanzania*, 50 INT’L L. NEWS 1 (2022).

42. See *id.* at 6.

43. See Robert J. Thornton, *Space, Time, and Culture Among the Iraqw of Tanzania*, 77 *Anthropos* 290, 290 (Nomos Verlagsgesellschaft mbH pub., 1982).

44. See Solomon ole Saibull & Rachel Carr, *Heard and Spear. The Maasai of East Africa*, 77 *Anthropos* 289, 289-90 (Nomos Verlagsgesellschaft mbH pub., 1982).

Historical exploration works of Dr. Krapf,⁴⁵ Charles New,⁴⁶ Rebman, Joseph Thompson,⁴⁷ and Hollis⁴⁸ suggest that the Maasai did not arrive in today's Tanzania in the mid-19th century. Charles New stated in the mid-19th Century that "they had migrated into East Africa from the north about 300 years earlier."⁴⁹

Their narrative estimates Maasai presence through oral history, as there was no written history,⁵⁰ which may have led to inaccuracies due to memory loss over time. Joseph Thompson on his part in the nineteenth century described the Maasai territory in the following words: "[T]he subject-matter of this book, may be described as occupying a diagonal stripe in the area enclosed between 5 S. Lat. and 1° N. Lat. and the meridian of 33° and 39° E. longitude."⁵¹ This area stretches from the Turkana region near Lake Rudolf in the north to the Hehe kingdom's borders beyond the Ruaha River in the south, including Ngorongoro, and Ng'otiek (Karatu),⁵² which Tanzanian government describes as recent immigrants.⁵³

The history of Maasai in Ngorongoro has been significantly changed by colonialism with the British annexing Serengeti and designating it as a National Park.⁵⁴ While Ngorongoro was designated for human-wildlife coexistence, the Maasai have been enclaved in a situation where their survival depends on state actions and policies influenced by UNESCO's World Heritage policies rooted in colonial-era racism.⁵⁵

Change in political leadership in Tanzania in 2021 marked a turning point, transforming what was once seen as a conservation issue into an ethnic conflict.⁵⁶ The new president openly supported and fueled propaganda that misrepresented

45. See generally J LEWIS KRAPF, TRAVELS, RESEARCHES, AND MISSIONARY LABOURS, DURING AN EIGHTEEN YEARS' RESIDENCE IN EASTERN AFRICA (London, Trübner & Co., Paternoster Row, 1890).

46. See generally CHARLES NEW, LIFE, WANDERINGS, AND LABOURS IN EASTERN AFRICA (London, Hodder & Stoughton, 27, Paternoster Row, 1873).

47. See generally JOSEPH THOMSON, THROUGH MASAI LAND: A JOURNEY OF EXPLORATION AMONG THE SNOWCLAD VOLCANIC MOUNTAINS AND STRANGE TRIBES OF EASTERN EQUATORIAL AFRICA (London, Sampson Low, Marston, Searle, & Rivington, 1887).

48. See generally A.C. HOLLIS, THE MASAI THEIR LANGUAGE AND FOLKLORE (Clarendon Press, 1905).

49. Ruel Macaraeg, *Moran Warrior*, FORENSIC FASHION, <http://www.forensicfashion.com/1857MasaiWarrior.html> [https://perma.cc/J3VL-5RJY] (last visited Apr. 22, 2025).

50. See HOLLIS, *supra* note 48, at 93.

51. See Thomson, *supra* note 47, at 13.

52. See Dennis Herlocker, *On the Road to Ngorongoro: Part IV (The Mbulu Plateau)*, STORIES OF E. AFR. (Sept. 9, 2021), <https://storiesofeastfrica.com/2021/09/09/on-the-road-to-ngorongoro-part-iv-the-mbulu-plateau> [https://perma.cc/4AAM-8FLT].

53. *Tanzania's Culture: People, Language, Tribes and Religion*, TANZANIA ODYSSEY (Nov. 14, 2022), <https://blog.tanzaniaodyssey.com/cadogan-guide-to-tanzania-people-culture-and-religion> [https://perma.cc/3NFN-QLDS].

54. See *id.*

55. See generally Leiyo Singo, *When Maasaiphobia Became Policy*, THE REPUBLIC (Aug. 3, 2022), <https://rpublic.com/august-september-2022/maasai-predicament-ngorongoro/> [https://perma.cc/2UJL-97WB].

56. Fergus Kell et al., *Reviving Tanzania's Regional Leadership and Global Engagement*, AFR. PROGRAMME (Apr. 2024), <https://www.chathamhouse.org/sites/default/files/2024-04/2024-04-29-tanzania-regional-leadership-global-engagement-kell-masabo-feltes.pdf> [https://perma.cc/H5T6-3D4G].

Maasai culture, history, pastoralism, and livelihoods.⁵⁷ Over the past four years, the Maasai have endured inhumane⁵⁸ and degrading treatment, resulting in deep collective trauma that will affect future generations. The Government is fundamentally driven by the desire to seize lands and resources for investment in tourism and hunting, rendering the Maasai presence in Ngorongoro a profound existential threat to its plans.⁵⁹ Consequently, destructive measures have been waged against Maasai people, culture, and pastoralism, with Maasai physical presence being perceived as an “inevitable” outcome.⁶⁰ State operatives, institutions, and private actors have persistently persecuted and antagonized the Maasai through dehumanizing and divisive, state-sponsored propaganda.⁶¹

To achieve its goals, the state implemented strategies such as a deliberate plan to defund social services by withholding public funds for four years (2021–2024).⁶² This left thousands without access to healthcare or equal education.⁶³ Tanzania’s policy of collective punishment against its citizens is deeply flawed and yet continues to be enforced.⁶⁴

Enforced starvation is another weapon wielded by Tanzanian authorities to create and sustain conditions that result in famine to a significant number of people who have not accepted the government propaganda to relocate.⁶⁵ The Government imposed taxes on trucks delivering food, equating them with tourist vehicles, to raise food costs or limit availability.⁶⁶ This manipulation creates famine as a weapon, given that physical annihilation of the Maasai in Ngorongoro was impractical due to the high tourist presence.⁶⁷ The deliberate starvation tactic sought to either force mass Maasai relocation or decimate the defiant population.⁶⁸ Other

57. See generally Joseph Moses Oleshangay, *Tanzania’s Maasai and the Threat of Genocide*, GENOCIDE WATCH (Mar. 9, 2024), <https://www.genocidewatchblog.com/podcast-episodes/tanzania-s-maasai-and-the-threat-of-genocide-with-joseph-moses-oleshangay> [<https://perma.cc/HX83-4ZMT>].

58. See generally *id.*

59. See generally Teklehaymanot G. Weldemichel, *Tanzania’s Maasai Are Being Forced Off Their Ancestral Land – The Tactics the Government Uses*, THE CONVERSATION (Jan. 16, 2025), <https://theconversation.com/tanzanias-maasai-are-being-forced-off-their-ancestral-land-the-tactics-the-government-uses-247349> [<https://perma.cc/FT3P-46WG>].

60. See generally *id.*

61. See generally Oleshangay, *supra* note 41.

62. See generally *id.*

63. See generally *id.*

64. See generally Denis Oleshangay, *Conservation Racism in Ngorongoro: A Tragic Loss of Common Sense and Leadership*, MWANZO TV NEWS (Aug. 14, 2023), <https://mwanzotv.com/conservation-racism-in-ngorongoro-a-tragic-loss-of-common-sense-and-leadership> [<https://perma.cc/C59Z-3YCH>].

65. See generally Chris Lang, “Like Apartheid.” Maasai in Ngorongoro Conservation Area Protest Against Forced Evictions and Loss of Basic Rights, REED-MONITOR (Aug. 26, 2024), <https://reddmonitor.substack.com/p/like-apartheid-maasai-in-ngorongoro> [<https://perma.cc/27DY-MPMC>].

66. See generally *id.*

67. See generally *id.*

68. See generally *id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

174 THE YEAR IN REVIEW

[VOL. 59]

strategies included disenfranchisement,⁶⁹ delisting villages, using lawfare⁷⁰, forced displacement, livestock extermination, erasure of cultural identity, and strict movement restrictions, such as requiring a “pass card” to access vital services such as health services in Karatu District.⁷¹

The campaign against the Maasai involved deliberately distorting their origins to foster an “us” versus “them” mentality that easily justifies segregation and targeting through discriminatory laws and policies.⁷² The government has implemented a well-funded strategy to exclude international scrutiny, assembling a dedicated team to spread anti-Maasai propaganda alongside its embassies abroad.⁷³ To suppress dissent, the President publicly warned against allowing the Maasai access to media.⁷⁴

Analyzing the context in Ngorongoro, the *mens rea* thresholds for the crime of apartheid, crimes against humanity, and genocide are met.⁷⁵ Genocide *actus reus* encompasses actions such as killings, inflicting serious bodily or mental harm, creating conditions designed to destroy the group, forcibly transferring children to other groups, and imposing forceful birth control measures.⁷⁶ Its *mens rea* consists of two interconnected elements: a general intent to commit the criminal acts (*dolus generalis*) and a specific intent to destroy the targeted group (*dolus specialis*).⁷⁷ Yet, it can be difficult to determine the proper timing of the commission of genocide and crime of apartheid, as both can be committed during relatively peaceful times.⁷⁸ Raphael Lemkin described “genocide” as “a composite of different acts of persecution or destruction,”⁷⁹ ranging from physical elimination to the “forced disintegration” of a people’s political and social institutions, culture, language, national sentiments, and religion.⁸⁰ Thus, genocide is a process, not an act.⁸¹

The Government campaign against the Maasai has been systematic with clear, overt intent to destroy, in whole or in part, the Maasai people and their traditional and cultural practices.⁸² Medical flying services were grounded, impacting over fifty

69. See generally *id.*

70. “Lawfare” is defined as “the use of legal action to cause problems for an opponent.” *Lawfare*, CAMBRIDGE.ORG, <https://dictionary.cambridge.org/us/dictionary/english/lawfare> [<https://perma.cc/U9WR-KY65>] (last visited Apr. 5, 2025).

71. Lang, *supra* note 65.

72. See generally Oleshangay, *supra* note 64.

73. See generally Lang, *supra* note 65.

74. See generally Oleshangay, *supra* note 41.

75. Francesca Albanese (Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967), *Anatomy of a Genocide*, ¶ 17, U.N. Doc. A/HRC/55/73 (July 1, 2024).

76. *Id.*

77. *Id.*

78. *Id.* ¶¶ 48–49.

79. RAPHAEL LEMKIN, *AXIS RULE IN OCCUPIED EUROPE*, at 92 (2d ed. 2008).

80. *Id.*

81. *Id.* at 79.

82. See generally, OSKAR BAUMANN, *THROUGH MAASAILAND TO THE SOURCE OF THE NILE* (Dietrich Reimer, 1894); OSKAR BAUMANN, *NGORONGORO’S FIRST VISITOR* 12 (East African Literature Bureau, 1963).

thousand people, just to ensure no alternative vital services were accessible.⁸³ More than 36,000 livestock were confiscated in the last sixteen months alone, contrary to court orders.⁸⁴ These horrors are committed by the state bearing the primary obligation to protect the safety of its citizens and safeguard their wellbeing.⁸⁵ Arguably, this ongoing campaign marks the darkest period in Maasai history since nineteenth-century devastation of smallpox, famine, and rinderpest.⁸⁶

In conclusion, the government has purposefully created conditions in Ngorongoro that either lead to displacement or slowly decimates a defiant population enslaved in an area akin to an open prison.⁸⁷ Measures intended to starve the population, mass displacements using weaponized social services, and the transfer of a population into the dominant group—all of which are actively being carried out against the Maasai in Ngorongoro—are all defined under Article 6 of the Rome Statute as genocide.⁸⁸ In response, in August 2024, tens of thousands of Maasai occupied Tanzania's busiest tourist road demanding suspension of government embargo polices in the area that affected lives and means of survival.⁸⁹

The responsibility to prevent genocide and other serious crimes stems from customary international law⁹⁰ and treaty obligations. Tanzania ratified the Rome Statute that established the International Criminal Court (ICC) and is obligated to prevent, investigate, and prosecute international crimes such as genocide, the crime of apartheid, and other heinous crimes committed within its territories.⁹¹ Failure to prosecute perpetrators of such crimes triggers the ICC's complementarity role to ensure no state becomes a haven for heinous crimes of international concern.⁹²

III. The Crime of Ecocide

In 2023, the environmental devastation caused by severe weather events due to climate change and conflicts around the world emphasized—once again—the

83. HUM. RTS. WATCH, REPORT: HUM. RTS. IMPACTS OF RELOCATING TANZANIA'S MAASAI 39 (2024).

84. *Maasai International Solidarity Alliance (MISA) Newsletter: September – October 2024*, AFR. EUR. FAITH & J. NETWORK 11 (AEFJN) (Oct. 23, 2024), <https://aefjn.org/en/maasai-international-solidarity-alliance-misa-newsletter-september-october-2024> [<https://perma.cc/C64S-CEP3>].

85. See *id.*

86. BAUMANN, *supra* note 82, at 251.

87. See generally HUM. RTS. WATCH, *supra* note 83.

88. See generally *id.*; see generally also Albanese, *supra* note 75.

89. Kim Harrisberg, *Tanzania's Maasai Protest Eviction in the Name of Conservation*, CONTEXT 3 (Aug. 23, 2024), <https://www.context.news/climate-justice/tanzanias-maasai-protest-eviction-in-the-name-of-conservation> [<https://perma.cc/L5GH-VL6Q>].

90. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277, 280.

91. Tanzania signed the Rome Statute on December 29, 2000, and deposited its instrument of ratification on August 20, 2002. See generally Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 3 [hereinafter Rome Statute].

92. Richard J. Goldstone & Janine Simpson, *Evaluating the Role of the International Criminal Court as a Legal Response to Terrorism*, 16 HARV. HUM. RTS. J. 13, 14 (2003).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

176 THE YEAR IN REVIEW

[VOL. 59]

urgency of bringing perpetrators of the crime of ecocide to justice.⁹³ This section provides a brief overview of events and developments that could spur the global movement to criminalize ecocide. The section also examines developments that could improve the international legal framework for criminalizing environmental harm and degradation. These developments could serve to broaden the perspectives in this process. In particular, it looks at two interlinked key factors in the criminalization of nature destruction: colonialism and the lack of Indigenous engagement.

A. LIMITATIONS OF INTERNATIONAL LAW

In 2016, the ICC prosecutor announced that the ICC would “give particular consideration to prosecuting Rome Statute crimes that are committed by means of, or that result in, inter alia, the destruction of the environment, the illegal exploitation of natural resources, or the illegal dispossession of land.”⁹⁴ Yet, the ICC has so far failed to follow this up in practice.⁹⁵ The ICC’s current jurisdiction is limited, as there is no specific category of crimes against the environment.⁹⁶ But under Article 8(2)(b)(iv) of the Rome Statute, damage to the environment in the context of armed conflict is considered a war crime.⁹⁷ In 2023, two poignant examples of this kind of “war crime” are the following:

First, on June 6, 2023, Russia destroyed the Nova Kakhovka dam in Ukraine that held one of the biggest water reservoirs in Europe.⁹⁸ The massive flooding that followed destroyed at least forty towns and villages.⁹⁹ Drinking water reservoirs for more than a million people, hundreds of thousands of hectares of farmland, and many endangered ecosystems were also contaminated, damaged, or threatened by the landmines, industrial chemicals, and an estimated 150 tons of industrial lubricants that flowed into the Dnipro river.¹⁰⁰ Therefore, at the end of the year 2023, Ukrainian prosecutor, Vladislav Ignatenko, announced an investigation to gather

93. See generally Observer, 2023 – A Year of Unprecedented Heat and Climate Extremes, OPERNICUS (Feb. 29, 2024), <https://www.copernicus.eu/en/news/news/observer-2023-year-unprecedented-heat-and-climate-extremes> [<https://perma.cc/KTE6-9KHZ>].

94. Office of the Prosecutor, *Policy Paper on Case Selection and Prioritization* 14 (Sept. 15, 2016), https://www.icc-cpi.int/sites/default/files/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf [<https://perma.cc/WG7Q-26HC>].

95. See generally IHL Talks, *The Prosecution of Ecocide and Other Environmental Crimes: State of the Law and Ways Forward*, GENEVA ACAD. (Apr. 11, 2024), <https://www.geneva-academy.ch/event/ihl-talks/detail/453-the-prosecution-of-ecocide-and-other-environmental-crimes-state-of-the-law-and-ways-forward> [<https://perma.cc/FN2B-HYPY>].

96. See generally *id.*

97. See Rome Statute of the International Criminal Court, July 17, 1998, art. 8(2)(b)(iv), U.N.T.S. 2187 (entered into force July 1, 2002) [hereinafter Rome Statute].

98. See Press Release, Security Council, With Kherson Dam’s Destruction, Plight of Ukraine’s People Will Only Get Worse, Emergency Relief Coordinator Warns Security Council, U.N. Press Release SC/15310 (June 6, 2023).

99. See generally *id.*

100. See Andriy Kostin, *Ecocide as a Weapon of War*, INT’L BAR ASS’N (May 21, 2024), <https://www.ibanet.org/Ecocide-as-a-weapon-of-war> [<https://perma.cc/4HK2-VHYK>].

evidence near the destroyed Kakhovka dam to prepare an ecocide case at the ICC.¹⁰¹

Second, the events of the Israel–Palestine war that followed the October 7, 2023, attack of Hamas in Israel, also led to environmental destruction in the Gaza Territory.¹⁰² Analysis of satellite imagery “shows the destruction of about 38–48% of tree cover and farmland” in Gaza, Palestine.¹⁰³ According to the U.N. Environment Programme, it is likely that the heavy scale of bombardments by Israel of the relatively small land area (365 km²–141 sq mi) can contaminate soil and groundwater in the long term.¹⁰⁴ It would be reasonable to assume that this environmental destruction of Gaza could be defined as a “war crime” committed against Palestine and that the Palestinian prosecutor could also launch an investigation to bring these crimes before the ICC.

But the Rome Statute still lacks jurisdiction over the crime of ecological harm outside the context of an international armed conflict.¹⁰⁵ Also, the Rome Statute focuses on individual criminal accountability and thus does not acknowledge corporate or state criminal liability.¹⁰⁶ Consequently, corporations and states complicit in environmental crimes, whether in peacetime or wartime, cannot be held legally accountable before the ICC for the resulting environmental devastation.¹⁰⁷ Vanuatu, for instance, is one of the Pacific Island states heavily affected by the consequences of climate change, such as returning hurricanes and rising sea levels, leading to possible eviction of inhabitants.¹⁰⁸ These negative effects of climate change are not caused by the minute carbon footprint of Vanuatu, but mostly by actors in the Global North.¹⁰⁹ Because multiple perpetrators are involved, it is difficult to determine who to charge. Therefore, it is worth noting that Vanuatu has taken the initiative to address the current inability of the international order to deal with this

101. See generally *Ukraine to Launch “Ecocide” Case Against Russia Following Dam Destruction*, EURONEWS (May 12, 2023), <https://www.euronews.com/2023/12/05/ukraine-to-launch-ecocide-case-against-russia-following-dam-destruction> [https://perma.cc/K9G7-3KPP].

102. See generally Kaamil Ahmed et al., *Ecocide in Gaza: Does Scale of Environmental Destruction Amount to a War Crime?*, THE GUARDIAN (Mar. 29, 2024), <https://www.theguardian.com/environment/2024/mar/29/gaza-israel-palestinian-war-ecocide-environmental-destruction-pollution-rome-statute-war-crimes-aoe> [https://perma.cc/4SGA-M6SK].

103. *Id.* at 3.

104. Ceerwan Aziz, *Environmental Legacy of Explosive Weapons in Populated Areas*, U.N. ENV’T PROGRAMME 2–3 (Nov. 5, 2021), <https://www.unep.org/news-and-stories/story/environmental-legacy-explosive-weapons-populated-areas> [https://perma.cc/K5EX-2655].

105. See generally Rome Statute.

106. *Id.* art. 25(2).

107. See generally *id.*

108. WORLD BANK GRP., CLIMATE RISK COUNTRY PROFILE: VANUATU 1, 10, 16 (2021), https://climateknowledgeportal.worldbank.org/sites/default/files/country-profiles/15825-WB_Vanuatu%20Country%20Profile-WEB.pdf [https://perma.cc/GES6-RTBM].

109. See generally CIVICUS Staff, *Vanuatu’s Climate Plan Shows Way Forward*, CIVIUS LENS (Aug. 24, 2022), <https://lens.civicus.org/vanuatus-climate-plan-shows-way-forward/> [https://perma.cc/HQB4-SMEK].

existential crisis.¹¹⁰ Despite limited capacity and resources, it has successfully campaigned to submit a resolution to the U.N. General Assembly, which is a testament to its commitment and determination.¹¹¹

On April 19, 2023, the U.N. General Assembly adopted—unanimously for the first time—a resolution seeking an Advisory Opinion from the ICJ on the obligations of states with regard to climate change.¹¹² By the deadline of August 15, 2024, the ICJ received sixty-two written comments.¹¹³ Public hearings are scheduled for December 2024.¹¹⁴ In September 2024, Vanuatu along with Fiji and Samoa submitted a joint proposal to amend the Rome Statute to recognize ecocide as an international crime.¹¹⁵ At the time of writing, it is not known whether the proposal to amend the Rome Statute will be discussed at the twenty-third session of the Assembly of States Parties to the ICC, to be held in The Hague from December 2–7, 2024.¹¹⁶ The expected Advisory Opinion and Rome Statute amendment will carry moral weight and could lead to a more balanced sharing of the burden of bearing the adverse effects of climate change.¹¹⁷

B. NEW DEVELOPMENTS

In addition to the challenges presented by the ICC’s jurisdiction, the lack of consensus on the definition of ecocide for an extended period of time contributed to the lengthy process of making ecocide a crime.¹¹⁸ But with the publication of a definition for “ecocide” in June 2021, prepared by an independent expert panel of the Stop Ecocide Foundation, developments for criminalizing ecocide at the national and international level seem to be gaining momentum.¹¹⁹ The proposed

110. See generally Julian Aguon & Margaretha Wewerinke-Singh, *How Vanuatu’s Climate Campaign Could Save the World*, THE NATION (Apr. 5. 2023), <https://www.thenation.com/article/environment/vanuatu-icj-climate-change-united-nations> [https://perma.cc/S2M3-N2H7].

111. See generally *id.*

112. See generally Jorge Alejandro Carrillo Bañuelos & Maria Antonia Tigre, *The ICJ’s Advisory Opinion on Climate Change: Key Takeaways from the 2024 Hearings (Part I)*, CLIMATE LAW (Mar. 10, 2025), <https://blogs.law.columbia.edu/climatechange/2025/03/10/the-icjs-advisory-opinion-on-climate-change-key-takeaways-from-the-2024-hearings-part-1> [https://perma.cc/C4DF-DJW6].

113. See Press Release, I.C.J., *Obligations of States in Respect of Climate Change*, No. 2024/61, I.C.J. Press Release, 1 (Aug. 16, 2024).

114. *Id.*

115. See Fiona Harvey, *Pacific Islands Submit Court Proposal for Recognition of Ecocide as a Crime*, THE GUARDIAN (Sept. 9, 2024), <https://www.theguardian.com/law/article/2024/sep/09/pacific-islands-ecocide-crime-icc-proposal> [https://perma.cc/CH2F-TSWQ].

116. Press Release, Assembly of States Parties Concludes its Twenty-Third Session, Assembly of States Parties (Dec. 6, 2024), <https://www.icc-cpi.int/news/assembly-states-parties-concludes-its-twenty-third-session> [https://perma.cc/XG2Y-YQR7].

117. See generally Press Release, *supra* note 111; see also I.C.J., *OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE: LATEST DEV.* (Dec. 20, 2024), <https://www.icj-cij.org/case/187> [https://perma.cc/2WZV-7T5Y].

118. See generally Kostin, *supra* note 100.

119. See generally *June 2021: Historic Moment as Independent Expert Panel Launches Definition of Ecocide*, STOP ECOCIDE INT’L (June 2021), <https://www.stopecocide.earth/legal-definition> [https://perma.cc/3DV3-VTSP].

definition reads: “ecocide” means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.”¹²⁰

This definition has served as a starting point for many penal provisions in both national and international regulations.¹²¹ In 2023 alone, national bills on ecocide were presented in Brazil (June 5), Belgium (July 20), Mexico (July 30), Italy (September 12), and Scotland (November 8)¹²² among others. Also, in this overview, the push by the Committee on Legal Affairs of the Environmental Crime Directive of the European Commission cannot be missed.¹²³ Its report of March 2023 states:

It is . . . important to create more awareness about environmental crime and damage worldwide.¹²⁴ This is necessary as the globaliz[ati]on of business activities means that, for example, EU based companies could be involved in criminal activities outside the territory of the Union.¹²⁵ Highlighting the active work by the United Nations, such as the efforts on strengthening the legal framework by including a definition of ecocide, is essential.¹²⁶

A year later, the new Environmental Crime Directive—with a definition of ecocide—was adopted by the European Parliament and entered into force.¹²⁷

C. BROADENING PERSPECTIVES

In the proposed definitions accompanying the Commentary, the Stop Ecocide panel acknowledges Indigenous perspectives by emphasizing the close relationship between severe environmental degradation and the “cultural value of elements of the environment.”¹²⁸ Also, the Intergovernmental Panel on Climate Change (IPCC) recognizes the importance of Indigenous knowledge in addressing the impacts of climate change.¹²⁹ But in various international fora where the criminalization of ecocide has been discussed for years, the critical Indigenous perspective that colonialism fuels the climate crisis has long been ignored.¹³⁰ Indigenous

120. See generally *id.*

121. See generally Isabella Kaminsky, *Growing Number of Countries Consider Making Ecocide a Crime*, THE GUARDIAN (Aug. 26, 2023), <https://www.theguardian.com/environment/2023/aug/26/growing-number-of-countries-consider-making-ecocide-crime> [https://perma.cc/JUT7-SGQ9] (last visited Apr. 10, 2025).

122. See generally *id.*

123. See generally Council Directive 2024/1203, 2024 O.J. (L 30).

124. *Report on the Proposal for a Directive of the European Parliament and of the Council on the Protection of the Environment Through Criminal Law and Replacing Directive 2008/99/EC: Explanatory Statement*, COM 75 (Mar. 28, 2023).

125. *Id.*

126. *Id.*

127. See Council Directive 2024/1203, 2024 O.J. (L 30).

128. See STOP ECOCIDE FOUNDATION, INDEPENDENT EXPERT PANEL FOR THE LEGAL DEFINITION OF ECOCIDE: COMMENTARY AND CORE TEXT 5 (2021).

129. See generally INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2022: IMPACTS, ADAPTATION AND VULNERABILITY 1 (2022).

130. See G.A. Res. 61/295, art. 19 (Sept. 13, 2007).

perspectives emphasize the link between ecocide and settler colonialism, seeing it as a form of genocide, which manifests through a settler colonial approach of land grabbing, extensive extraction industries, and predatory exploitation, which disregards Indigenous rights; particularly the right to free, prior, and informed consent.¹³¹ Another highlight therefore is the IPCC's Climate Change 2023 Synthesis Report, which (finally) explicitly acknowledges the link between ecocide and the deep-rooted legacy of colonialism.¹³²

D. ACCOUNTABILITY MEASURES

Next steps to explore might be accountability measures. As Deputy Prosecutor Nazhat Shameem Khan stated on May 27, 2024, in her keynote address during The Promise of International Law in the Face of Ecological Crises Conference: “[i]n terms of accountability measures, the tradition in domestic jurisdictions has been to keep environmental protection firmly within the administrative regulatory framework.¹³³ The link between criminal law and environmental protection has been marginal and mainly limited to penaliz[ing] non-compliance of administrative obligations.”¹³⁴

For Indigenous peoples, however, there are opportunities at the regional and national levels to protect themselves from perpetrators of environmental crimes.¹³⁵ The European directive requiring companies to carry out supply chain due diligence should, therefore, not be overlooked in this review.¹³⁶ Ongoing 2023 negotiations on the E.U. Corporate Sustainability Due Diligence Directive (CSDD Directive) have led to adaptation of this directive in 2024.¹³⁷ According to the CSDD Directive, companies have to investigate and prevent, mitigate, and end human rights violations and environmental damage in their supply chains in accordance with the OECD Guidelines.¹³⁸ Also, companies within the scope of CSDD Directive have the responsibility to identify and address adverse human rights and

131. *Id.*

132. See generally INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2023: SYNTHESIS REPORT 101 (2023) (“Present development challenges causing high vulnerability are influenced by historical and ongoing patterns of inequity such as colonialism, especially for many Indigenous Peoples and local communities.”).

133. See INTERNATIONAL CRIMINAL COURT, THE OFFICE OF THE PROSECUTOR, KEYNOTE ADDRESS, THE PROMISE OF INTERNATIONAL LAW IN THE FACE OF ECOLOGICAL CRISES 4 (May 27, 2024). It is beyond the scope of this article to go into detail about reparative possibilities; the Author encourages readers to read Rachel Killean, UCLA, *Reparation in the Aftermath of Ecocide*, *Promise Institute Symposium - An International Crime of Ecocide: New Perspectives*, THE PROMISE INST. FOR HUM. RIGHTS, (2023).

134. *Id.*

135. See Council Directive 2024/1740, 2024 O.J. (L 5).

136. See *id.*

137. See *id.*

138. See *id.*

environmental impacts of their actions inside and outside Europe.¹³⁹ A drawback is that in terms of damage to the environment, a company is only liable if this damage to the environment also leads to negative impacts on human well-being.¹⁴⁰ Fortunately, the new Environmental Crime Directive¹⁴¹ and the U.S. Comprehensive Environmental Response, Compensation, and Liability Act,¹⁴² which has a similar framework, can offer some relief in this regard.

E. CONCLUSION

The results of a lengthy process of negotiating new regulations, as well as lobbying by CSOs, academics, grassroots organizations, feminist groups, and Indigenous groups, are evident. At national and international levels, many regulations have recognized and criminalized “ecocide.”¹⁴³ Furthermore, an important development is that the perspectives in the movement to criminalize ecocide have broadened.¹⁴⁴ The purpose of the global movement to criminalize ecocide is to protect the Earth.¹⁴⁵ In practice, the challenge remains to resolve the current impacts of intensive exploitation and climate change on the environment and to stop further destruction. In this regard, experience shows that participation of Indigenous peoples is indispensable.¹⁴⁶ Finally, it is important not to lose sight of the now-recognized link between colonialism and ecocide.¹⁴⁷

IV. Universal Jurisdiction

Over the past decade, universal jurisdiction has been an increasingly-used tool to work toward accountability for international crimes that are otherwise unprosecuted.¹⁴⁸ This section discusses the current landscape and significant developments.

139. See *Corporate Sustainability Due Diligence*, EUROPEAN COMM’N, <https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence> [<https://perma.cc/8CQK-JYBJ>] (last visited Apr. 10, 2025).

140. See *id.*

141. See *European Parliament Approves Due Diligence Directive: ‘Important Step, but Could be More Ambitious,’ National Committee of The Netherlands*, NAT’L COMM. OF THE NETH. (Apr. 30, 2024), <https://www.iucn.nl/en/news/europees-parlement-keurt-due-diligence-richtlijn-goed-stap-voor-waarts-maar-kan-ambitieuzer> [<https://perma.cc/T6MV-FGRR>] (last visited Apr. 10, 2025).

142. 42 U.S.C. § 9601 et seq.

143. STOP ECOCIDE FOUNDATION, *supra* note 128.

144. *Id.*

145. *Id.*

146. See G.A. Res. 61/295 (Sept. 13, 2007).

147. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *supra* note 132.

148. See generally, e.g., Morten Boe, *Rethinking Universal Criminal Jurisdiction: Toward a Multidimensional Framework*, MODERN C.L. REV. (Jan. 8, 2024), <https://crimlrev.net/2024/01/08/rethinking-universal-criminal-jurisdiction-toward-a-multidimensional-framework-morten-boe> [<https://perma.cc/3KLK-BLJ6>] (last visited Apr. 10, 2025); Dana Ahdab, *The Rebirth of Universal Jurisdiction: How the Syrian Conflict Has Led to the Expansion of the Use of Universal Jurisdiction*, 61 COLUM.

A. SYRIAN CASES

The use of universal jurisdiction to prosecute international crimes in Syria remained dynamic in 2024. There were at least twenty-seven active cases at the beginning of 2024.¹⁴⁹ The bulk of prosecutions were in Germany and the Netherlands, with other open cases in Belgium, the United Kingdom, and France, which issued international arrest warrants for four high-ranking officials, including then-Syrian President Bashar Al Assad, for 2013 chemical attacks.¹⁵⁰ Notably, a number of cases are against women in ISIS, several of whom played roles in imprisonment and sexual violence against Yazidi women.¹⁵¹ Action against Syria is partially attributable to active CSOs as well as the U.N. International, Impartial and Independent Mechanism for Syria (IIIM), which are both active in collecting and sharing evidence with competent jurisdictions.¹⁵² CSOs also engaged in litigation and advocacy in numerous jurisdictions.¹⁵³

B. RWANDAN CASES

Although the last case at the International Criminal Tribunal for Rwanda's successor body closed in late 2023 after a determination that the accused was unfit to stand trial,¹⁵⁴ a number of universal jurisdiction cases seeking accountability for Rwandan genocide are proceeding in Belgium and France.¹⁵⁵ Thirty years on, many of these cases, too, face challenges due to the suspects' advancing age.¹⁵⁶ This is illustrative of a greater issue in universal jurisdiction: there is no statute of limitations for these grave international crimes, and the complexity of the cases combined

J. TRANSNATIONAL L. 85, 88-89 (2023); Julia Crawford & Thierry Cruvellier, *Ukraine is Accelerating a Revival of Universal Jurisdiction*, JUSTICEINFO.NET (Nov. 29, 2022), <https://www.justiceinfo.net/en/109532-philip-grant-ukraine-revival-universal-jurisdiction.html> [<https://perma.cc/GGK7-9F83>].

149. See TRIAL INT'L, UNIVERSAL JURISDICTION ANNUAL REVIEW 14 (2024) [hereinafter UJAR]. This number increases includes ISIS crimes in Iraq. The number expands if prosecutions under other forms of extraterritorial jurisdiction are included.

150. See *id.* at 58; see discussion *infra* Section IV.E (discussing expansion in French courts).

151. See, e.g., *id.* at 80, 85-86, 91. In September 2024, the Swedish Prosecution Authority indicted a Swedish citizen for genocide, crimes against humanity, and war crimes related to the Islamic State's attack on the Yazidi; *Woman Indicted with Genocide, Crimes against Humanity and Serious War Crimes in Syria*, ÅKLAGARMYNDIGHETEN (Swedish Prosecution Authority) (Sept. 19, 2024), <https://www.aklagare.se/en/media/press-releases/2024/september/woman-indicted-with-genocide-crimes-against-humanity-and-serious-war-crimes-in-syria> [<https://perma.cc/L9DT-JNAF>]; see also *Episode 92 – Prosecuting Female Jihadis with Tanya Mehra*, ASYMMETRICAL HAIRCUTS (Feb. 9, 2024), <https://www.asymmetricalhaircuts.com/episodes/episode-92-prosecuting-female-jihadis-with-tanya-mehra/> [<https://perma.cc/HEH7-PDGH>].

152. TRIAL INT'L, *supra* note 149, at 13; At A Glance, UNITED NATIONS INT'L, <https://iiim.un.org/who-we-are/at-a-glance/> [<https://perma.cc/8WHK-G78L>] (last visited Sept. 22, 2024).

153. TRIAL INT'L, *supra* note 149, at 13.

154. See *Prosecutor v. Felicien Kabuga*, Case No. MICT-13-38-T, Decision Imposing an Indefinite Stay of Proceedings ¶ 4 (Sept. 8, 2023).

155. See TRIAL INT'L, *supra* note 149, at 30, 39.

156. *Id.* at 14, 15.

with significant political and financial hurdles may lead to justice denied due to illness or death of the perpetrators.¹⁵⁷

C. ACCOUNTABILITY FOR CORPORATE ACTION

Recent years have seen the rise of attempts to achieve accountability for corporations linked to international crimes.¹⁵⁸ This trend extends to universal jurisdiction cases.¹⁵⁹ The trial of Alex Schneider, a Swiss oil executive (co-indicted with Swedish national Ian Lundin) for aiding and abetting war crimes in what is now South Sudan, began in a Swedish court in 2023, and is expected to continue through 2026.¹⁶⁰ There are also active cases or investigations in France against technology executives for complicity in torture and enforced disappearances in Egypt and Libya; against a Rwandan media shareholder for genocide, complicity in genocide, and crimes against humanity; and against a cement company and its executives for complicity in crimes against humanity in Syria,¹⁶¹ as well as corporate cases based on active personality jurisdiction.¹⁶²

D. EXPANSION VIA THE LJUBLJANA-THE HAGUE CONVENTION

The Ljubljana-The Hague Convention (LHC) opened for signature in February 2024.¹⁶³ Primarily a multilateral mutual legal assistance treaty, the LHC addresses matters like evidence sharing and extradition to facilitate domestic prosecution of the three core international crimes: genocide, crimes against humanity, and war

157. See *30 Years after the Rwanda Genocide, Nearly 50 Cases Still Open in Belgium*, THE BRUSSELS TIMES (Mar. 31, 2024), <https://www.brusselstimes.com/986710/30-years-after-the-rwandan-genocide-almost-50-cases-still-open-in-belgium> [https://perma.cc/4P8P-35UR]; TRIAL INT'L, *supra* note 147, at 14-15.

158. See generally TRIAL INT'L, *supra* note 149.

159. *Id.*

160. AFP, *Sweden Approves Swiss Lundin Oil Exec War Crimes Trial*, JUSTICE INFO (Nov. 10, 2022), <https://www.justiceinfo.net/en/108724-sweden-approves-swiss-lundin-oil-exec-war-crimes-trial.html> [https://perma.cc/CKS9-Y6F4]; TRIAL INT'L, *supra* note 149, at 97-98.

161. See TRIAL INT'L, *supra* note 149, at 41, 43, 52, 60-62; see also Patrick Howell O'Neill, *French Spyware Bosses Indicted for the Role in the Torture of Dissidents*, MIT TECH. REV. (June 22, 2021), <https://www.technologyreview.com/2021/06/22/1026777/france-spyware-amesys-nexa-crimes-against-humanity-libya-egypt> [https://perma.cc/R5ZN-PA8Z].

162. See TRIAL INT'L, *supra* note 149, at 38, 44.

163. *Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes*, MLA DIPLOMATIC CONFERENCE (May 26, 2023), <https://www.gov.si/assets/ministrstva/MZEZ/projekti/MLA-pobuda/The-Ljubljana-The-Hague-MLA-Convention.pdf> [https://perma.cc/Y988-L9YY] [hereinafter LHC] (not yet entered into force); see *Mutual Legal Assistance and Extradition Initiative*, REP. OF SLOVN., <https://www.gov.si/en/registries/projects/mla-initiative/#e52197> [https://perma.cc/9D4B-K45X] (last visited Apr. 15, 2025); *Convention Signed to Combat International Crimes More Effectively*, GOV. NETH. (Feb. 14, 2024), <https://www.government.nl/latest/news/2024/02/14/convention-signed-to-combat-international-crime-more-effectively> [https://perma.cc/TG3J-MMJL].

crimes.¹⁶⁴ The LHC defines these crimes¹⁶⁵ and obligates States Parties to criminalize and establish jurisdiction over them.¹⁶⁶ (This is significant, in particular, for LHC States Parties who are not party to the Rome Statute—which, currently, is only Moldova).¹⁶⁷ When there is no recourse to extradition of a suspect for an included crime, LHC Article 8(3) imposes an obligation on States Parties to establish universal jurisdiction—i.e., based on a suspect’s presence alone.¹⁶⁸ This provision was controversial: it was included in the final text only by allowing state reservations limiting establishing jurisdiction to active personality jurisdiction.¹⁶⁹ More than thirty states have signed the LHC—including many outside Europe—that are not actively using universal jurisdiction.¹⁷⁰ The LHC remains open for signature until February 2025.¹⁷¹

E. EXPANSION IN FRANCE

France entered 2024 with fewer impediments to exercising universal jurisdiction.¹⁷² In two parallel cases, *Chaban* and *Nema*, heard in 2023¹⁷³, France’s supreme court, *la Cour de Cassation*, confirmed the ability to prosecute crimes against humanity and war crimes committed in Syria under universal jurisdiction.¹⁷⁴ Overturning a 2021 ruling,¹⁷⁵ the Court confirmed that French courts have jurisdiction over these international crimes because Syrian legislation punishes the underlying acts, such as murder or rape, even if these are not classified as international crimes in Syrian statutes.¹⁷⁶ Additionally, in one of the decisions, the Court applied a less stringent standard for evaluating whether a suspect habitually resides in France,

164. See LHC, *supra* note 163, art. 49.

165. *Id.* art. 5.

166. *Id.* arts. 7–8.

167. *Id.*

168. *Id.*

169. *Id.* arts. 8(2), 92(3); see Bruno de Oliveira Biazatti & Ezéchiél Amani, *The Ljubljana–The Hague Convention on Mutual Legal Assistance: Was the Gap Closed?*, EJIL: TALK! (June 12, 2023), <https://www.ejiltalk.org/the-ljubljana-the-hague-convention-on-mutual-legal-assistance-was-the-gap-closed> [<https://perma.cc/DQ9V-6BFH>]; see also Frederika Schweighoferova, *Symposium on Ljubljana–The Hague Convention on Mutual Legal Assistance: Critical Reflection–Fulfilling the Potential of this Landmark Treaty*, OPINIO JURIS (Aug. 3, 2023), <https://opiniojuris.org/2023/08/03/symposium-on-ljubljana-the-hague-convention-on-mutual-legal-assistance-critical-reflections-fulfilling-the-potential-of-this-landmark-treaty> [<https://perma.cc/TML5-PH5N>].

170. See REP. OF SLOVN., *supra* note 161.

171. See *id.*

172. Cour de cassation [Cass.] [supreme court for judicial matters], May 12, 2023, Nos. 22-80.057, 22-82.468 (Fr.).

173. See *id.*

174. *France: Court Ruling Win for Syrian Victims*, HUM. RTS. WATCH (May 12, 2023), <https://www.hrw.org/news/2023/05/12/france-court-ruling-win-syrian-victims> [<https://perma.cc/VGK7-H6NF>].

175. Cour de cassation [Cass.] [supreme court for judicial matters], Nov. 24, 2021, No. 21-81.344 (Fr.).

176. Press Release: *Universal Jurisdiction of French Justice for Crimes Committed in Syria*, COUR DE CASSATION (May 12, 2023), <https://www.courdecassation.fr/en/toutes-les-actualites/2023/05/12/press-release-universal-jurisdiction-french-justice-crimes> [<https://perma.cc/DWX7-WL52>].

paving the way for prosecution under universal jurisdiction.¹⁷⁷ The *Nema* trial will begin in April 2025.¹⁷⁸

Although the decisions are limited to Syrian prosecutions, observers anticipate that they signal a lowering of barriers to the use of universal jurisdiction in France, which are higher than in many European states because of the specific contours of France's legislation implementing the Rome Statute.¹⁷⁹

F. EXPANSION IN THE UNITED STATES

The conflict in Ukraine has also affected universal jurisdiction in the United States.¹⁸⁰ President Biden signed into law an amendment to the War Crimes Act in 2023 to expand jurisdiction to include where the "offender is present in the United States, regardless of the nationality of the victim or the offender."¹⁸¹ This closed a gap in U.S. legislation to allow the exercise of universal jurisdiction over grave breaches of the Geneva Conventions and violations of Common Article 3.¹⁸² In December 2023, the U.S. Department of Justice brought the first ever charges under the War Crimes Act (under passive personal jurisdiction) against four members of Russian armed forces for unlawful confinement, torture, and inhuman treatment of a U.S. national on Ukrainian territory.¹⁸³ Then, in December 2024, an indictment was unsealed in a second case under the statute—this one involving cruel and inhuman treatment of victims including U.S. nationals, in a Syrian prison.¹⁸⁴

The second ever prosecution under the U.S. Torture Act and the first of a non-U.S. citizen continued, despite significant delays.¹⁸⁵ An appeal alleging insufficient

177. See TRIAL INT'L, *supra* note 149, at 13, 55–56, 63–64; Jake Palmer, *Loosening the Four Locks: French Universal Jurisdiction in the Chaban and Nema Cases*, REDRESS (May 30, 2023), <https://redress.org/news/loosening-the-four-locks-french-universal-jurisdiction-in-the-chaban-and-nema-cases/> [<https://perma.cc/T7PG-YGU2>]; Magali Cohen & Hans Lucas, *France: The Court of Cassation Confirms the Jurisdiction of French Courts in Two Syrian Cases*, FIDH (May 12, 2023), <https://www.fidh.org/en/issues/international-justice/universal-jurisdiction/france-the-court-of-cassation-confirms-the-jurisdiction-of-french> [<https://perma.cc/P2U8-TTY4>].

178. *French Judiciary Sets Trial Date for Islam Alloush*, ENAB BALADI (Apr. 4, 2024), <https://english.enabbaladi.net/archives/2024/04/french-judiciary-sets-trial-date-for-islam-alloush> [<https://perma.cc/5NMB-MEHS>].

179. See Palmer, *supra* note 177.

180. CONGRESSIONAL RESEARCH SERVICE, LEGAL SIDEBAR: THE FIRST PROSECUTION UNDER THE WAR CRIMES ACT: OVERVIEW AND INTERNATIONAL LEGAL CONTEXT (Dec. 22, 2023) [hereinafter CRS Legal Sidebar].

181. 18 U.S.C. § 2441(b).

182. 18 U.S.C. § 2441(c).

183. C.R.S. LEGAL SIDEBAR, *supra* note 180.

184. Indictment, *United States v. Jamil Hassan & Abdul Salam Mahmoud*, No. 1:24-cr-00533 (N.D. Ill.), Nov. 11, 2023, *available at* <https://www.justice.gov/opa/media/1379601/dl> [<https://perma.cc/N3U7-TMV3>].

185. See *United States v. Correa*, No. 20-cr-00148-CMA, 2024 WL 4267866 (D. Colo. Sept. 23, 2024); Michael Kalik, *U.S. Judge Declines to Dismiss Charges against West African Man Accused of Torture in Gambia*, DENVER GAZETTE (Mar. 29, 2024), https://denvergazette.com/news/federal-judge-refuses-to-dismiss-torture-charges-in-novel-prosecution/article_54f6fd6e-edf6-11ee-a525-

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

186 THE YEAR IN REVIEW

[VOL. 59]

nexus to the United States failed in early 2024 with the judge noting the “universal condemnation . . . repugnancy of torture.”¹⁸⁶ The trial, against a former member of a Gambian death squad, resulted in a guilty verdict on five counts of torture and one conspiracy count in April 2025.¹⁸⁷

e3d12b19106d.html [https://perma.cc/XVY4-LNSL]; *Colorado: Trial Postponed for Alleged Gambian Death Squad Member Accused of Torture and Conspiracy to Commit Torture*, TRIAL INT’L (Sept. 12, 2024), <https://trialinternational.org/latest-post/trial-postponed-for-alleged-gambian-death-squad-member-accused-of-torture> [https://perma.cc/DU53-BHMH].

186. Kalik, *supra* note 183.

187. Press Release, U.S. Dep’t of Justice, *Gambian Man Convicted on Torture Charges* (Apr. 15, 2025), <https://www.justice.gov/opa/pr/gambian-man-convicted-torture-charges> [https://perma.cc/72UL-BEVQ]; see *U.S. Jury Finds Gambian Death Squad Leader Guilty of Torture*, TRIAL INT’L (Apr. 15, 2025), <https://trialinternational.org/latest-post/u-s-jury-finds-gambian-death-squad-member-guilty-of-torture> [https://perma.cc/U2NY-CLKF].

International Litigation

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This Article discusses significant legal developments in international litigation during 2024.

I. Foreign Sovereign Immunities Act

Foreign states are presumptively immune from suit, and their property is presumptively immune from attachment and execution, unless an exception in the Foreign Sovereign Immunities Act (FSIA) applies.²

A. JURISDICTION OVER CRIMINAL CASES

Following remand from the United States Supreme Court's 2023 decision in *Turkiye Halk Bankasi A.S. v. United States*, in which the Court held that the FSIA does not provide statutory sovereign immunity in criminal cases,³ the United States Court of Appeals for the Second Circuit in *United States v. Bankasi A.S.* clarified the scope of common law sovereign immunity in criminal actions. The Second Circuit Court held that common law foreign sovereign immunity does not protect Halkbank, a foreign state-owned corporation, from criminal prosecution.⁴

The Second Circuit reasoned that the common law favors “defer[ence] to the Executive Branch as to whether a party should be afforded common-law foreign

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2. See 28 U.S.C. § 1602 (1976).

3. *Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 281 (2023).

4. *United States v. Turkiye Halk Bankasi A.S.*, 120 F.4th 41, 43 (2d Cir. Oct. 22, 2024).

sovereign immunity;” therefore, the Executive’s decision that a foreign state-owned corporation could be prosecuted, in this case for alleged criminal activity related to the corporation’s commercial activities, was dispositive.⁵ The Court found no common law basis for absolute immunity from prosecution by the United States of a foreign sovereign for alleged criminal conduct related to commercial activities.⁶

B. COMMERCIAL ACTIVITY EXCEPTION

The D.C. Circuit has continued to refine the “direct effects” prong of the commercial activity exception. In *Wye Oak Technologies, Inc. v. Republic of Iraq*, a case also discussed in last year’s edition, the Court dismissed a suit against the Republic of Iraq for lack of subject matter jurisdiction, holding that when a foreign state breaches a contract outside the United States, there is no “direct effect” inside the United States under the FSIA, unless that contract required the foreign state to perform inside the United States or necessarily contemplated the United States as a place of performance.⁷

By contrast, in two other decisions this year, the D.C. Circuit held that trafficking activities and specific targeting of American investments could have a direct effect in the United States, bringing such activities within the commercial activity exception.⁸

C. MINIMUM CONTACTS

The Supreme Court is poised to weigh in on whether plaintiffs must prove minimum contacts for federal courts to assert personal jurisdiction over foreign states under the FSIA. The Court granted certiorari to review the Ninth Circuit’s decision in *Devas Multimedia Priv. Ltd. v. Antrix Corp. Ltd.*⁹ The Court’s decision will decide a split between the Ninth Circuit, which requires the minimum contacts test for personal jurisdiction over a foreign state, and four other circuits, which have held that foreign states are not “persons” entitled to due process under the Fifth Amendment.¹⁰

5. *Id.*

6. *Id.*

7. 109 F.4th 509, 517–18 (D.C. Cir. 2024). Cleary Gottlieb represented the Republic of Iraq in this matter.

8. See *Exxon Mobil Corp. v. Corporacion CIMEX, S.A.*, 111 F.4th 12, 32 (D.C. Cir. 2024); see also *EIG Energy Fund XIV, L.P. v. Petroleo Brasileiro, S.A.*, 104 F.4th 287, 294 (D.C. Cir. 2024).

9. See No. 20-36024, 2023 WL 4884882, at *1 (9th Cir. Aug. 1, 2023), *cert. granted*, No. 24-17, 2024 WL 4394120 (U.S. Oct. 4, 2024).

10. See *TMR Energy Ltd. v. State Property Fund of Ukraine*, 411 F.3d 296, 303 (D.C. Cir. 2005); *Gater Assets Ltd. v. AO Moldovagaz*, 2 F.4th 42, 49 (2d Cir. 2021); *Abelesz v. Magyar Nemzeti Bank*, 692 F.3d 661, 694 (7th Cir. 2012); *S & Davis Int’l, Inc. v. Republic of Yemen*, 218 F.3d 1292, 1303 (11th Cir. 2000).

D. EXPROPRIATION EXCEPTION

This term, the Supreme Court will consider a split between the D.C. Circuit and the Second and Ninth Circuits concerning the FSIA's expropriation exception, which the Court recently narrowed in *Federal Republic of Germany v. Philipp*.¹¹ The Court will review the D.C. Circuit's holding in *Simon v. Republic of Hungary* that plaintiffs raised a plausible inference that the exception applied to their claims.¹² The Court will address whether (1) historical commingling of assets is sufficient to establish a commercial nexus with the United States; (2) a plaintiff must make a valid claim that an exception applies at the pleading stage, rather than merely raising a plausible inference; and (3) a sovereign defendant bears the burden of producing evidence to disprove that the proceeds of expropriated property have a commercial nexus with the United States.¹³

II. Service of Process

"Digital blockchain technology, and the anonymity it helps to maintain, has presented new roadblocks to initiating and prosecuting civil litigation."¹⁴ Two courts this year have considered the use of the same technologies that empower anonymity to serve process on anonymous or unknown defendants who otherwise cannot be served, discussed below.

In the first case, *Chow v. Defendant 1*,¹⁵ the plaintiff claimed that the defendant ran a "global internet cryptocurrency fraud and conversion scheme" using "the internet and cryptocurrency blockchain electronic technology."¹⁶ She sought leave to serve process by "Non-Fungible Token (NFT) electronic transfer" under Rule 4(f)(3),¹⁷ which allows service on an individual not within any judicial district of the United States "by other means not prohibited by international agreement, as the court orders."¹⁸ More specifically, she proposed transferring an NFT on a blockchain to the defendant's crypto wallet addresses, which would include a URL pointing to a website with a notice and PDFs of the summons and complaint.¹⁹ The plaintiff argued that all her communications with the anonymous defendant had been online and that the fraudulent scheme "was facilitated online using

11. See *Federal Republic of Germany v. Philipp*, 592 U.S. 169, 187 (2021).

12. See *Simon v. Republic of Hungary*, 77 F.4th 1077, 1104 (D.C. Cir. 2023), *cert. granted*, 144 S. Ct. 2680 (2024).

13. *Republic of Hungary v. Simon*, 145 S. Ct. 480, 486 (2025).

14. See *Meghji v. Wallet Owner (In re Celsius Network LLC)*, 666 B.R. 28, 31 (Bankr. S.D.N.Y. 2024).

15. See *generally* *Chow v. Defendant 1*, No. 24-CV-480, 2024 U.S. Dist. LEXIS 71604, at *1 (E.D. La. Apr. 19, 2024).

16. *Id.*

17. *Id.*

18. Fed. R. Civ. P. 4(f)(3).

19. *Chow*, 2024 U.S. Dist. LEXIS 71604, at *2; see *generally* *Chow v. Defendant 1*, US DC COURT SERVICE, <https://usdccourtservice.com/cv-00480/> [<https://perma.cc/NZP6-4YXY>] (containing the notice and PDFs).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

190 THE YEAR IN REVIEW

[VOL. 59]

cryptocurrency blockchain technology.”²⁰ The court granted the motion, but on dubious grounds. It noted that the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters (Convention) does not expressly preclude service by NFT and that China (where the plaintiff believed the defendant to be) had not “specifically objected to service via NFT electronic transfer.”²¹ But the Convention is exclusive.²² That is, when it applies, a plaintiff must use one of the methods it authorizes or permits; it is not enough to say that the Convention does not expressly forbid it.²³ Nothing in the Convention authorizes or permits service of process by NFT.²⁴ A better way to reach the same result is to note that because the defendant’s address and apparently his or her name were unknown, the Convention does not apply and so does not limit the methods of service the court can authorize.²⁵

In the second case, *In re Celsius Network LLC*,²⁶ which arose on similar facts (an unknown defendant abroad who had a crypto wallet and a motion for service via NFT), the court granted the plaintiff’s motion for leave to serve by alternate means, but it recognized that because the defendant’s address was unknown, the Convention did not apply.²⁷ The court went on to analogize service by NFT to service by e-mail.²⁸ It is important to understand that the court was not drawing the analogy in order to hold that service by NFT is within the “postal channel” as that term is used in the Convention.²⁹ Instead, it was focused on whether service by NFT “comports with due process” by providing adequate notice to the defendant.³⁰ Due

20. *Chow*, 2024 U.S. Dist. LEXIS 71604, at *2.

21. *Id.*

22. See *Cadence Design Sys., Inc. v. Fenda USA, Inc.*, 734 F. Supp. 3d 960, 963 (N.D. Cal. May 21, 2024) (noting that “service must take place through authorized methods delineated in the Convention”).

23. See, e.g., *PNC Bank N.A. v. Baglien*, 347 F.R.D. 311, 314 (S.D. Tex. 2024); *Cadence*, 734 F. Supp. 3d at 963. But see *Peanuts Worldwide LLC v. P’ships & Uninc. Ass’n*, 347 F.R.D. 316, 324-27 (N.D. Ill. 2024) (noting contrary authority but adhering to view of earlier cases).

24. See *Conclusions & Recommendations*, HAGUE CONF. ON PRIV. INT’L L. (July 2024), <https://assets.hcch.net/docs/6aef5b3a-a02c-408f-8277-8c995d56f255.pdf> [<https://perma.cc/DB8X-K7BS>] (stating The Special Commission of the Hague Conference on Private International Law’s recent conclusion that the Convention permits service by e-mail in states that have not objected to service by postal channels, as e-mail should be considered part of the postal channel. But while the analogy between e-mail and postal mail is intuitive and straightforward, it is much harder to see how transmission of an NFT via the blockchain could be part of the postal channel).

25. See Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, art. 1, Nov. 15, 1965, 658 U.N.T.S. 163. (noting that “this Convention shall not apply where the address of the person to be served with the document is not known”).

26. See *In re Celsius Network LLC*, 666 B.R. at 30.

27. *Id.* at 38, n.6.

28. *Id.* at 35.

29. *Id.* at 33, 37.

30. *Id.* at 37.

process is always required, whether or not the Convention applies.³¹ But *Celsius* does not stand for the proposition that if service by email is permissible under the Convention, then service by NFT is necessarily permissible under the Convention too.³²

III. Personal Jurisdiction

A. DEVAS V. ANTRIX

On October 4, 2024, the U.S. Supreme Court granted certiorari in *Devas Multimedia Priv. Ltd. v. Antrix Corp.*³³ In *Devas*, the Ninth Circuit reversed a trial court's determination that a minimum contacts analysis was unnecessary for the exercise of personal jurisdiction over a foreign state under the FSIA.³⁴ In doing so, and denying *en banc* review, the Ninth Circuit extended a longstanding split with other circuit courts that have addressed this issue.³⁵

The FSIA governs personal jurisdiction over foreign states in federal court.³⁶ Under the FSIA, foreign states, including certain state-owned entities, are entitled to sovereign immunity unless an enumerated exception applies—for example, actions to confirm arbitral awards rendered against foreign states.³⁷ When such an exception applies, the FSIA mandates that personal jurisdiction over a foreign state “shall exist.”³⁸ Other courts that have addressed the issue have concluded that use of such mandatory language leaves no room for a minimum contacts requirement.³⁹

Looking to circuit precedent premised on the statute's legislative history, the Ninth Circuit in *Devas* read the FSIA as additionally requiring a foreign state to possess sufficient minimum contacts before a federal court can properly exercise personal jurisdiction.⁴⁰ The court noted that, although the FSIA required satisfaction of minimum contacts, an alternative constitutional basis requiring minimum contacts might also exist, as it was unclear whether foreign states are “persons” entitled to due process protection within the meaning of the Fifth Amendment.⁴¹

The Supreme Court's decision, irrespective of the outcome, will in some way impact the ability of plaintiffs to establish personal jurisdiction and thereby maintain suits against foreign states in federal courts.⁴² This includes, in important part,

31. *Id.* at 38.

32. See *In re Celsius Network LLC*, 666 B.R. at 38.

33. See *Devas Multimedia Priv. Ltd. v. Antrix Corp.*, No. 20-36024, 2023 WL 4884882, at *1 (9th Cir. Aug. 1, 2023), *cert. granted*, 145 S. Ct. 117 (2024).

34. *Devis Multimedia Priv. Ltd. v. Antrix Corp.*, 91 F.4th 1340, 1350–51 (9th Cir. 2024) (Bumatay, J., dissenting).

35. See *id.*

36. *Id.* at 1342.

37. *Id.*

38. *Id.*

39. *Id.* at 1350–51.

40. *Devis Multimedia Priv. Ltd.*, 91 F.4th 1350–51.

41. *Id.* at 1350–52.

42. *Id.* at 1352.

the ease with which award-creditors, like *Devas*, can maintain actions to confirm arbitral awards against foreign state defendants.⁴³

As recognized by the dissent in the Court's denial for rehearing *en banc*, the *Devas* decision, as it stands, could impose a significant barrier to plaintiffs in maintaining suits against foreign state defendants in the courts of the Ninth Circuit.⁴⁴ The Supreme Court has the potential to erect this barrier nationally, requiring minimum contacts be satisfied on the basis of either the FSIA itself or the Fifth Amendment. Or it may clarify that minimum contacts are not required, removing a more than forty-year-old barrier to maintaining such suits in the courts of the Ninth Circuit.

B. ALJABRI V. BIN SALMAN

A recent decision from the D.C. Circuit, *Aljabri v. bin Salman*,⁴⁵ raises questions about how the court will assess "reasonableness" in exercising personal jurisdiction in cases going forward.⁴⁶

In *Aljabri*, a former Saudi official alleged that Crown Prince Mohammed bin Salman along with certain other Saudi officials, orchestrated a plot to assassinate him after he had fled to Canada.⁴⁷ Aljabri sought jurisdictional discovery from the defendants to prove their minimum contacts with the United States, as required for the court to exercise personal jurisdiction.⁴⁸

The district court denied the request, concluding that even if the discovery revealed the defendants had sufficient minimum contacts with the United States, the exercise of personal jurisdiction would still be "unreasonable," not comporting with the "traditional notions of fair play and substantial justice" prong of the personal jurisdiction inquiry.⁴⁹ In particular, the court found relevant the burden on the defendants as foreign officials traveling and litigating in the United States, a lack of a U.S. interest in the dispute, and Aljabri's failure to show it would be more convenient to litigate in the United States as opposed to Canada.⁵⁰

The D.C. Circuit reversed, summarily holding that certain requested discovery "could both establish minimum contacts with the United States and affect the fairness of exercising personal jurisdiction [over the officials]."⁵¹ In light of this holding, it is unclear what independent weight the D.C. Circuit gave to the reasonableness prong of the personal jurisdiction inquiry, and what independent role reasonableness will play in the inquiry going forward.⁵²

43. *Id.*

44. *Id.* at 1344.

45. *Aljabri v. Bin Salman*, 106 F.4th 1157 (D.C. Cir. 2024).

46. *See id.* at 1161–62.

47. *Id.* at 1159.

48. *Aljabri v. Saud*, No. 20-2146, 2022 WL 4598519, at *1, *16–17 (D.D.C. Sept. 30, 2022), *vacated and remanded sub nom.*, 106 F.4th 1157 (D.C. Cir. 2024).

49. *Id.* at *13–14.

50. *Id.* at *14.

51. *Aljabri*, 106 F.4th at 1165.

52. *See id.*

IV. Act of State Doctrine

The act of state doctrine is a prudential limitation on the exercise of judicial review, requiring U.S. courts to refrain from judging the validity of acts of a foreign sovereign taken within its own territory.⁵³

American courts continue to clarify the sovereign actions to which the doctrine applies, including clarifying whether a government's mistake negates an official "act of state" having occurred, and expounding upon the Second Hickenlooper Amendment's expropriation exception.⁵⁴ Courts also continue to refine their treatment of allegedly illegal tortious conduct by government agents under the act of state doctrine.⁵⁵

In *Emden v. Museum of Fine Arts*, the Fifth Circuit applied the act of state doctrine to uphold the dismissal of a suit filed by heirs to the owner of a painting seized by Nazis during World War II.⁵⁶ Petitioners alleged that the Dutch Art Property Foundation (SNK) had confused their painting with a similar one while repatriating it, and inadvertently shipped it to the wrong recipient.⁵⁷ The court rejected petitioners' contention that an inadvertent act of a foreign government did not carry the requisite intent to count as an act of state,⁵⁸ reasoning that regardless of the alleged intention behind the act, the court could not adjudicate the effect that shipping the painting had on its ownership without calling into question the validity of an act of the Dutch government.⁵⁹

Among other arguments, the appeals court also disagreed with the petitioners' contention that the SNK was not an official government actor because it was not funded by the Dutch government.⁶⁰ The court reasoned that "a body set up by the government, operating within it, and exercising governmental powers – even if not funded by it – is best characterized as an official actor."⁶¹ Therefore, the shipping of the painting was an official government act.⁶²

In *Helmerich & Payne Int'l Drilling Co. v. Petroleos de Venezuela, S.A.*, the District Court for the District of Columbia (D.D.C.) clarified the contours of the Second Hickenlooper Amendment, diverging in its interpretation from that of other Circuits.⁶³ Acknowledging that both the Second and Fifth Circuits, and a prior D.D.C. court, had previously held that the amendment applied only to property located in the United States, the *Helmerich* court reasoned that prior D.C. Circuit "guidance"

53. See, e.g., *W.S. Kirkpatrick & Co. v. Env't Tectonics Corp., Int'l*, 493 U.S. 400, 406 (1990); *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 401 (1964).

54. 22 U.S.C. § 2370(e)(2) (the Amendment permits courts to hear claims of expropriation even where they would otherwise fall under the act of state doctrine).

55. *W.S. Kirkpatrick & Co.*, 493 U.S. at 405.

56. *Emden v. Museum of Fine Arts*, 103 F.4th 308, 311 (5th Cir. 2024).

57. *Id.*

58. *Id.* at 315.

59. *Id.* at 315–18.

60. *Id.* at 320.

61. *Id.*

62. *Emden*, 103 F.4th 308, 311 (5th Cir. 2024).

63. *Helmerich & Payne Int'l Drilling Co. v. Petroleos de Venezuela, S.A.*, No. 11-CV-1735, 2024 WL 4253142, at *1, *17–18 (D.D.C. Sept. 20, 2024).

instead compelled the conclusion that the amended was not so limited.⁶⁴ Ultimately, the court applied the amendment despite the expropriated property never entering the United States.⁶⁵ The court also held that the amendment applied also to claims for damages, rather than only for claim of title, though the D.C. Circuit has never squarely ruled on the issue.⁶⁶

In *Dvoynik v. Philipp*, the Eleventh Circuit considered claims stemming from an allegedly illegal police search of petitioners' house in Austria pursuant to a warrant issued by an Austrian court.⁶⁷ Petitioners alleged, among other instances of malfeasance, that the police officers exceeded the scope of the warrant in their search.⁶⁸ But the Austrian courts subsequently affirmed the legality of the search and seizure.⁶⁹ Therefore, the Ninth Circuit rejected petitioners' arguments that the government officials essentially lacked official authority to engage in their course of conduct, reasoning that the actions were "ostensibly exercises of Austrian police power" that had been affirmed by the Austrian courts.⁷⁰ The claims thus fell squarely within the act of state doctrine.⁷¹

The fact that the search was ostensibly legal under Austrian law stands in contrast to similar cases in which courts have refused to apply the act of state doctrine to allegedly illegal acts committed by foreign governments.⁷² For example, in *United States v. Chang*, a government official's alleged conspiracy to defraud investors would also have been illegal under Mozambican law, and the court reasoned that the actions "would therefore not be considered actions of the Mozambican Government despite his former position in said Government."⁷³

V. International Discovery

A. OBTAINING U.S. DISCOVERY FOR USE IN FOREIGN PROCEEDINGS

The Second Circuit became the first circuit to rule on the applicability of 28 U.S.C § 1782 (Section 1782) to an investor-state arbitration tribunal following the Supreme Court's decision in *ZF Automotive, Inc. v. Luxshare, Ltd.*, in which the Court found that Section 1782 discovery was not available in international commercial arbitration.⁷⁴ In *Webuild S.P.A. v. WSP USA Inc.*,⁷⁵ the Second Circuit held that an

64. *Id.* at *16–18.

65. *Id.* at *18.

66. *Id.* at *15–16.

67. *Dvoynik v. Philipp*, No. 23-12240, 2024 WL 95440, at *1–2 (11th Cir. filed Jan. 9, 2024).

68. *Id.*

69. *Id.* at *4.

70. *Id.*

71. *Id.*

72. *Id.*

73. *United States v. Chang*, No. 18-CR-00681 (NGG), 2024 WL 2817494, at *19 (E.D.N.Y. May 31, 2024).

74. *ZF Auto. U.S., Inc. v. Luxshare, Ltd.*, 596 U.S. 619, 619–20 (2022). *ZF Automotive* was described in further detail in last year's edition.

75. *Webuild S.P.A. v. WSP USA Inc.*, 108 F.4th 138, 144 (2d Cir. 2024).

arbitral tribunal constituted under the International Centre for Settlement of Investment Disputes (ICSID) was not a “foreign or international tribunal” within the meaning of Section 1782, which allows U.S. federal courts the discretion to compel witness testimony and document production for “use in a proceeding in a foreign or international tribunal.”⁷⁶

The court reasoned that the specific ICSID tribunal at issue did not possess the attributes that evidence an intent to imbue the panel with the requisite “governmental authority.”⁷⁷ Rejecting Webuild’s argument that “ICSID Arbitral Tribunals are ‘quintessential international tribunals’ with ‘numerous features’ that make ‘clear that [they] are imbued with governmental authority,’” the court instead focused on a comparison between the ICSID tribunal and the UNCITRAL tribunal that was at issue in the Supreme Court’s decision in *ZF Automotive*.⁷⁸ The Court concluded that the “characteristics of UNCITRAL that the *ZF Automotive* Court found insufficient to give the *ad hoc* arbitration panel at issue there a governmental character are virtually the same as those of Webuild’s ICSID Tribunal.”⁷⁹ The Second Circuit’s opinion in *Webuild* therefore demonstrates that courts may be unwilling to find that ICSID tribunals or other arbitration panels convened pursuant to international investment agreements are imbued with the requisite governmental authority sufficient to permit discovery under Section 1782.⁸⁰

The U.S. District Court for the Western District of Texas followed this trend in *In re Hunan Sokan New Materials Co.*,⁸¹ where it addressed the question of whether the Shanghai International Economic and Trade Arbitration Commission (SHIAC) is a “foreign or international tribunal” under Section 1782.⁸² Like the Second Circuit in *Webuild*, the Texas district court engaged in a fact-specific analysis to conclude that SHIAC is not a governmental or intergovernmental body that qualifies as a “foreign or international tribunal” under Section 1782 and, therefore, Section 1782 discovery was not available.⁸³

B. OBTAINING DISCOVERY FROM ABROAD FOR USE IN U.S. PROCEEDINGS

Under the Hague Evidence Convention, U.S. courts may compel the production of documents located abroad for use in U.S. proceedings, using the multi-factor comity analysis established by *Société Nationale Industrielle Aérospatiale v. U.S. District Court for the Southern District of Iowa*.⁸⁴ The *Aérospatiale* Court held that the Hague Convention, which permits foreign discovery pursuant to the foreign state’s

76. *Id.* at 141 (internal citations omitted).

77. *Id.*

78. *See id.* at 142–44.

79. *Id.* at 144.

80. *Id.* at 142–44.

81. *In re Hunan Sokan New Materials Co.*, No. 1:23-MC-01445-DII, 2024 WL 3670195, at *4 (W.D. Tex. Aug. 2, 2024), *report and recommendation adopted*, No. 1:23-MC-1445-DII, 2024 WL 3976017 (W.D. Tex. Aug. 27, 2024).

82. *Id.*

83. *Id.* at *6.

84. *Société Nationale Industrielle Aérospatiale v. U.S. Dist. Ct.*, 482 U.S. 522, 544 n.28 (1987).

internal laws, provides a supplement to—but does not replace—the normal discovery mechanisms available in federal courts.⁸⁵

In *Skillz Platform Inc. v. Papaya Gaming, Ltd.*,⁸⁶ the U.S. District Court for the Southern District of New York relied on *Aérospatiale*'s comity considerations to overrule the defendant's objection to produce otherwise discoverable information outside of the Hague Convention.⁸⁷ Rejecting the defendant's argument that Israel's Privacy Protection Law barred it from producing such information, the court noted that the Hague Convention's "process raises the prospect of substantial delay, as well as a narrowing of the discovery that would otherwise be available under the Federal Rules."⁸⁸

The *Skillz* decision follows two recent decisions finding that China's Personal Information Protection Law does not block discovery, suggesting that non-U.S. data protection statutes do not always provide a grounds for a litigant in an American court to refuse to provide discovery in the U.S.⁸⁹

VI. Recognition and Enforcement of Foreign Judgments

In U.S. courts, the U.N. Convention on the Recognition and Enforcement of Foreign Arbitration Awards (New York Convention) governs the recognition and enforcement of most foreign arbitral awards.⁹⁰

A. FOREIGN ARBITRAL AWARDS

In *NextEra Energy Glob. Holdings B.V. v. Kingdom of Spain*, a consolidated appeal of three award enforcement actions against Spain,⁹¹ the U.S. Court of Appeals for the D.C. Circuit ruled that district courts have jurisdiction to enforce "intra-EU" investment treaty arbitral awards under the arbitration exception in the FSIA.⁹²

85. *Id.* at 529, 536.

86. *Skillz Platform Inc. v. Papaya Gaming, Ltd.*, No. 24CV1646(DLC), 2024 WL 4471684, at *8 (S.D.N.Y. Oct. 11, 2024), *reconsideration denied*, No. 24CV1646 (DLC), 2024 WL 4839405 (S.D.N.Y. Nov. 20, 2024).

87. *Id.*

88. *Id.* at *7.

89. See *Owen v. Elastos Found.*, 343 F.R.D. 268, 289 (S.D.N.Y. 2023); *Cadence Design Sys., Inc. v. Syntronic AB*, No. 21-CV-03610-SI (JCS), 2022 WL 2290593, at *5 (N.D. Cal. June 24, 2022).

90. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Dec. 11, 1970, 21 U.S.T. 2517 (entered into force Dec. 29, 1970). The New York Convention is implemented in U.S. law through Chapter 2 of the Federal Arbitration Act (FAA). 9 U.S.C. §§ 201–08 (2013). The Inter-American Convention on International Commercial Arbitration, implemented in Chapter 3 of the FAA, governs the recognition and enforcement of awards if a majority of the parties to an arbitration agreement are citizens of states that have ratified it.

91. *NextEra Energy Glob. Holdings B.V. v. Kingdom of Spain*, 656 F. Supp. 3d 201, 206 (D.D.C. 2023); *9REN Holding S.Á.R.L. v. Kingdom of Spain*, No. 19-CV-01871 (TSC), 2023 WL 2016933, at *1 (D.D.C. Feb. 15, 2023); *Blasket Renewable Invs. v. Kingdom of Spain*, 665 F. Supp. 3d 1, 1 (D.D.C. 2023).

92. *NextEra Energy Glob. Holdings B.V. v. Kingdom of Spain*, 112 F.4th 1088, 1111 (D.C. Cir. 2024).

While the ruling appears to pave the way for enforcement of intra-EU awards in U.S. courts, it also restricts the ability of district courts to issue anti-suit injunctions against foreign sovereigns.⁹³

In *Metropolitan Municipality of Lima v. Rutas de Lima S.A.C.*, the U.S. District Court for the District of Columbia declined to vacate two arbitral awards on grounds of alleged fraud and misconduct under Section 10 of the FAA, noting that “[t]he tribunal heard and rejected” plaintiff’s defense that the underlying contract had been procured by corruption, and rejecting Plaintiff’s proffered “new evidence.”⁹⁴ The district court determined that it would “not upend well-settled law by rehearing a claim two tribunals have independently rejected” and therefore granted the cross-motions to confirm the awards.⁹⁵

The Fourth Circuit considered the public policy exception in Article V of the New York Convention in *Estate of Ke v. Yu*.⁹⁶ The Court rejected petitioner’s argument that enforcement of the award, which had been issued by a tribunal seated in Hong Kong, “would violate Chinese currency control laws and thereby violate the United States’ policy favoring international comity.”⁹⁷ The Court held that, even though the award had been denominated in two different currencies by the tribunal and the district court order enforcing the award, enforcement of the award did not require petitioner to violate Chinese currency laws and did not fall within the narrow public policy defense.⁹⁸

B. FOREIGN COURT JUDGMENTS

In *Trejos Hermanos Sucesores S.A. v. Verizon Commc’ns Inc.*, the District Court for the Southern District of New York declined to apply any discretionary grounds for non-enforcement of a foreign judgment issued by a Costa Rican court against Verizon.⁹⁹ The court reiterated that, when considering due process concerns in determining whether to recognize a foreign judgment, New York courts are primarily concerned with “procedural due process, not substantive due process.”¹⁰⁰ Because “Verizon was provided with procedural due process,” the court enforced the approximately \$51 million judgment against Verizon, which has been appealed to the Second Circuit.¹⁰¹

Two circuits courts considered the recognition of foreign proceedings under the Bankruptcy Code. In *In re Al Zawawi*, the Eleventh Circuit took a different

93. See *id.* at 1105.

94. *Metro. Mun. of Lima v. Rutas de Lima S.A.C.*, No. 1:20-CV-02155 (ACR), 2024 WL 1071119, at *1, *12 (D.D.C. Mar. 12, 2024), *appeal pending*, No. 24-7053 (D.C. Cir.).

95. *Id.* at *2.

96. *In re Estate of Ke v. Yu*, 105 F.4th 648, 655 (4th Cir. 2024).

97. *Id.* at 651, 653.

98. *Id.* at 659–60.

99. *Trejos Hermanos Sucesores S.A. v. Verizon Communications Inc.*, No. 1:21-CV-08928 (JLR), 2024 WL 149551, at *15 (S.D.N.Y. Jan. 12, 2024).

100. *Id.* at *7 (internal quotation omitted).

101. *Id.* at *9.

approach from the Second Circuit,¹⁰² holding that a foreign representative is not required to demonstrate that a foreign debtor meets the eligibility requirements under Chapter 1 to obtain recognition of a foreign proceeding under Chapter 15.¹⁰³ In *Vertiv, Inc. v. Wayne Burt PTE, Ltd.*, the Third Circuit clarified the standard for courts considering the procedural impact of pending foreign bankruptcy proceedings, specifying that the threshold “parallel” inquiry for extending adjudicatory comity requires that the foreign proceeding is ongoing in a duly authorized tribunal while the U.S. civil action is pending and that the outcome of the U.S. action may affect the debtor’s estate.¹⁰⁴

VII. Forum Non Conveniens

The doctrine of *forum non conveniens* grants courts discretion to dismiss a case where an alternative foreign forum is available, adequate, and more convenient.¹⁰⁵ In 2024, several courts grappled with a long-standing circuit split regarding the doctrine’s availability in proceedings to enforce foreign arbitral awards under Chapter 2 of the Federal Arbitration Act (the FAA).¹⁰⁶

In *Estate of Ke v. Yu*, the Fourth Circuit attempted to reconcile the circuit split.¹⁰⁷ The plaintiff sought to enforce an award granted in its favor by an arbitration panel in Hong Kong.¹⁰⁸ The defendant, a U.S. citizen residing in Maryland, argued that the Maryland district court was an inconvenient forum and that Hong Kong was an appropriate alternative forum.¹⁰⁹ The district court disagreed, finding that *forum non conveniens* is unavailable in a proceeding brought under the New York Convention.¹¹⁰

On appeal, the Fourth Circuit declined to decide whether the doctrine is available under the New York Convention, reasoning that the Maryland forum was the “most suitable forum” for enforcing the award.¹¹¹ The court distinguished Second Circuit case law applying the doctrine in enforcement proceedings, reasoning that the plaintiff’s action to enforce a foreign award against a U.S. citizen did not raise “the significant foreign policy question of whether a U.S. court can and should enter a judgment that places a demand on a foreign government.”¹¹²

102. See generally *In re Barnet*, 737 F.3d 238, 247 (2d Cir. 2013).

103. *In re Al Zawawi*, 97 F.4th 1244, 1251–52 (11th Cir. 2024).

104. *Vertiv, Inc. v. Wayne Burt PTE, Ltd.*, 92 F.4th 169, 179–80 (3d Cir. 2024).

105. *Jiali Tang v. Synutra Int’l Inc.*, 656 F.3d 242, 248 (4th Cir. 2011) (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 (1981)).

106. 9 U.S.C. §§ 201–208 (Chapter 2 of the FAA implements the New York Convention).

107. *In re Estate of Ke*, 105 F.4th 648, 656 (4th Cir. 2024).

108. *Id.* at 651.

109. *Id.* at 655–56.

110. *Id.* at 656.

111. *Id.*

112. *Id.* at 656–57 (citing *In re Arbitration Between Monegasque De Reassurances S.A.M. v. Nak Naftogaz of Ukraine*, 311 F.3d 488, 496 (2d Cir. 2002); *Figueiredo Ferraz E Engenharia de Projeto Ltda. v. Republic of Peru*, 665 F.3d 384, 384 (2d Cir. 2011)).

Instead, the court applied the D.C. Circuit's rule that "*forum non conveniens* is not available in proceedings to confirm a foreign arbitral award because only U.S. courts can attach foreign commercial assets found within the United States."¹¹³ Accordingly, the Fourth Circuit concluded that the plaintiff was "entitled to seek recognition and enforcement of the Hong Kong final award by a U.S. court capable of exercising subject-matter jurisdiction and personal jurisdiction over Yu, who has assets within the court's jurisdiction."¹¹⁴

Meanwhile, a federal district court in New York refused to extend the doctrine of *forum non conveniens* to the enforcement of foreign judgments.¹¹⁵ In *Williams v. Fed. Gov't of Nigeria*, the plaintiff sought to enforce a judgment it obtained against the Nigerian defendants in a U.K. court.¹¹⁶ The defendants argued that the parties' contractual forum selection clause requiring them to resolve disputes in the U.K. extended to the enforcement of any judgment rendered thereunder.¹¹⁷

The court distinguished proceedings to enforce foreign arbitral awards from proceedings to enforce foreign judgments, noting that the former implicate "not more than a contract right," while the latter implicate the "international order" and principles of comity.¹¹⁸ The court also highlighted the differences in the statutory schemes that govern the enforcement of foreign awards and judgments.¹¹⁹ For instance, the FAA requires enforcement "in accordance with the rules of procedure of the territory where the award is relied upon and *forum non conveniens* is a matter of procedure."¹²⁰ Meanwhile, Article 53 of New York's Civil Practice Law and Rules (CPLR)¹²¹ recognizes a form of *forum non conveniens* only in limited circumstances and, notably, does not grant a court discretion to refuse recognition of a judgment because it would be more convenient to obtain recognition elsewhere.¹²²

The district court concluded that, in any event, the doctrine could not weigh in favor of dismissal in the absence of any other forum that would permit U.S. recognition of the U.K. judgments.¹²³

113. *Id.* at 657 (quoting *LLC SPC Stileks v. Republic of Moldova*, 985 F.3d 871, 876 n.1 (D.C. Cir. 2021)).

114. *Id.*

115. *Williams v. Fed. Gov't of Nigeria*, No. 23-CV-7356, 2024 WL 3759649, at *20-22 (S.D.N.Y. Aug. 12, 2024), *appeal filed*, No. 24-2329 (2d Cir. Sept. 5, 2024).

116. *Id.* at *1-4.

117. *Id.* at *19.

118. *Id.* at *21.

119. *Id.* at *20.

120. *Id.*

121. N.Y. C.P.L.R. § 5300 (McKinney) (Article 53 of the CPLR governs the recognition of a foreign judgment in New York).

122. *Williams*, 2024 WL 3759649, at *19-20 (citing CPLR § 5304(b)(6)).

123. *Id.* at *22.

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This article reviews significant legal and political developments impacting women internationally in 2024. Highlighted areas of interest include the right to health, gender-based and sexual violence, sexual harassment and assault, human trafficking, and international criminal courts and tribunals.

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I. Legal Empowerment

Though 2024 was a significant election year globally,¹ little electoral progress occurred for gender equality.² While adequate political participation and inclusion of women are necessary for a representative democracy to function well (e.g., the creation of inclusive governance that addresses the needs of women including adequate healthcare, reproductive care, access to education, availability of childcare, and protection from ever-present violence), women's voices are missing from the majority of legislatures, courts, and all levels of decision-making bodies in most countries.³ Despite improvements in existing legal frameworks, significant steps must occur to close the gender equality gap.⁴ Laws that support women's access to political participation are often missing, weak, ineffective, or not implemented, underscoring the need for rigorous implementation of more and effective legal measures.⁵

The World Economic Forum (WEC) yearly produces the Global Gender Gap (GGG) Report, a tool for understanding the state of gender equality globally.⁶ The report ranks 146 countries on benchmarks that compare male and female treatment and gender parity across four dimensions: (1) Economic Participation and Opportunity; (2) Educational Attainment; (3) Health and Survival; and (4) Political Empowerment.⁷ In 2024, no country achieved gender parity in any measured dimension.⁸ At the current rate, parity will take almost two centuries to achieve, per

1. See *The 2024 Global Elections Super-Cycle*, INT'L IDEA, <https://www.idea.int/initiatives/the-2024-global-elections-supercycle> [<https://perma.cc/KU3L-B9FK>] (last visited Nov. 12, 2024).

2. See generally Julia Thalín, *2024 Election Super-Cycle: A Key Moment for Gender Equality?*, INT'L IDEA (Oct. 31, 2024), <https://www.idea.int/blog/2024-election-super-cycle-key-moment-gender-equality> [<https://perma.cc/X9QR-HVQ3>].

3. Richard E. Matland, *Women's Representation in National Legislatures: Developed and Developing Countries*, 23 LEGIS. STUD. Q. 109, 111 (1998); Kathleen M. Fallon et al., *Resolving the Democracy Paradox: Democratization and Women's Legislative Representation in Developing Nations*, 77 AM. SOCIO. REV. 381 (May 2012); See generally GEORGETOWN UNIV. INST. FOR WOMEN, PEACE, & SEC. (GIWPS) & PEACE RES. INST. OSLO (PRIO), *WOMEN, PEACE, AND SECURITY INDEX 1* (Comm.'s Dev. Inc. ed., 2023), <https://giwps.georgetown.edu/wp-content/uploads/2023/10/WPS-Index-full-report.pdf> [<https://perma.cc/339W-E97L>].

4. See generally U.N. WOMEN & U.N. DEP'T. OF ECON. & SOC. AFF.'S, *PROGRESS ON THE SUSTAINABLE DEVELOPMENT GOALS: THE GENDER SNAPSHOT 2024 1* (2024), <https://www.unwomen.org/sites/default/files/2024-09/progress-on-the-sustainable-development-goals-the-gender-snapshot-2024-en.pdf> [<https://perma.cc/Q9DR-JXXL>]; Priyanka Gupta et al., *Legal and Policy Frameworks for Women's Empowerment: Global Perspectives*, 4(3) J. INFORMATICS EDUC. & RSCH. 438, 440-42 (2024).

5. See generally MARINA ELEFANTE ET AL., WORLD BANK GRP., *ACCELERATING GENDER EQUALITY THROUGH REFORMING LEGAL FRAMEWORKS* (June 2023), <https://documents1.worldbank.org/curated/en/099758006132310429/pdf/IDU04bef0153039c304a680b-9e501b0b599ba039.pdf> [<https://perma.cc/64PJ-8D4Y>].

6. KUSUM KALI PAL ET AL., WORLD ECON. F., *GLOB. GENDER GAP REPORT 2024* (World Econ. F., ed., June 11, 2024), <https://www.weforum.org/publications/global-gender-gap-report-2024/digest> [<https://perma.cc/8SUU-NBQ9>].

7. See *id.*

8. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

WOMEN'S INTEREST NETWORK 203

the WEC.⁹ In 2024, GGG reported 68.5% gender parity,¹⁰ a 0.1% increase from 2023.¹¹ While Europe led the 2024 regional index in all rankings with a score of seventy-five percent gender parity, political parity and representation in Europe was only thirty-six percent, the highest score amongst regions.¹² The Middle East and North Africa ranked last with a parity score of 61.7%, and their performance in Political Empowerment ranked lowest at 11.7%.¹³

A. WOMEN'S REPRESENTATION IN POLITICAL LEADERSHIP

Women's political representation and growth in legal empowerment stagnated or worsened in 2024.¹⁴ Populist and religiously motivated political movements across the globe question women's competence and abilities, and also undermine possibilities for women to undertake leadership roles in legislative, judicial, governmental, and national affairs, highlighting the persistent and grave nature of systemic oppression.¹⁵

Over sixty national elections were held in 2024; many brought more setbacks than gains for women's political representation.¹⁶ Over the past fifty years, less than half (47.2%) of the countries tracked by the WEC's GGG Index have had at least one woman in top political office.¹⁷ Global gender parity in parliamentary representation reached thirty-three percent in 2024, with Latin America demonstrating

9. *Id.*

10. *Id.*

11. PAL, *supra* note 6; Briony Harris, *What is the Gender Gap (and Why is it Getting Wider)?*, WORLD ECON. F. (Nov. 1, 2017), <https://www.weforum.org/stories/2017/11/the-gender-gap-actually-got-worse-in-2017> [<https://perma.cc/ZY2W-8FYP>].

12. PAL, *supra* note 6.

13. *Id.*

14. Vibeke Venema et al., *Growth of Women in Power Grinds to Near-Halt in a Mega-Election Year*, BBC (Dec. 28, 2024), <https://www.bbc.com/news/articles/cy895l25gwxo> [<https://perma.cc/E2HG-2TYH>].

15. Dianne Penn, *Afghanistan: Taliban Rule has Erased Women from Public Life, Sparked Mental Health Crisis*, THE U.N. (Aug. 13, 2024), <https://news.un.org/en/story/2024/08/1153151> [<https://perma.cc/8NME-4374>]; *Why So Few Women are in Political Leadership, and Five Actions to Boost Women's Political Participation*, U.N. WOMEN (Sept. 10, 2024), <https://www.unwomen.org/en/news-stories/explainer/2024/09/five-actions-to-boost-womens-political-participation> [<https://perma.cc/2MP4-F3TK>] [hereinafter *Women's Political Participation*]; see generally *The Future is . . .*, U.N. WOMEN (2024), <https://www.unwomen.org/en/annual-report/2024> [<https://perma.cc/RRK3-DYEQ>].

16. Saskia Brechenmacher, *Navigating Setbacks: Women's Political Representation in the 2024 Super Election Year*, CARNEGIE ENDOWMENT FOR INT'L. PEACE (Oct. 1, 2024), <https://carnegieendowment.org/research/2024/10/navigating-setbacks-womens-political-representation-in-the-2024-super-election-year> [<https://perma.cc/YCR3-6F4M>]; Katharina Buchholz, *2024: The Super Election Year*, STATISTA (Jan. 19, 2024), <https://www.statista.com/chart/31604/countries-where-a-national-election-is-was-held-in-2024> [<https://perma.cc/2GSQ-BBCF>]; Lou Robinson, *At Least 70 Countries have Elections in 2024. A Guide in Maps and Charts*, CNN (July 8, 2024), <https://www.cnn.com/2024/07/08/world/global-elections-2024-maps-charts-dg/index.html> [<https://perma.cc/E4JF-ST4R>].

17. PAL, *supra* note 6.

the most continuous improvement.¹⁸ As of 2024, 107 countries have never had a woman as Head of State.¹⁹ In 2024 women held twenty-seven percent of seats in National Parliaments and 35.5% of seats in local governments worldwide.²⁰ With few exceptions, most countries showed stagnation or a decline in representation by women in political leadership.²¹ Mexico and Rwanda remain the only countries with equal political representation by women and men.²²

Lisa Blunt Rochester from Delaware and Angela Alsobrooks from Maryland, both Black women, were elected in 2024 to serve in the U.S. Senate.²³ Judge Pamela Goodwine became the first Black woman to serve on the Kentucky Supreme Court.²⁴ Additionally, South Dakota saw a record number of women elected to its state legislature in 2024.²⁵ Despite these modest wins, U.S. women overall are not represented equitably in elected offices.²⁶

Mongolia succeeded in efforts to increase women's parliamentary participation in 2024.²⁷ Following its 2023 Constitutional reform that enlarged its legislative branch, June 2024 achieved a record-breaking result: the election of thirty-two women who gained seats in Mongolia's 126-member parliament, representing 25.4% of the total number of parliamentarians.²⁸

Afghanistan's near total exclusion of women from political life, systemic oppression of women and girls, and gender apartheid has arguably reached a level amounting to "crimes against humanity."²⁹ In Iran, the years of protest after Mahsa Amini's

18. *Id.*

19. *Women's Political Participation*, *supra* note 15.

20. *Id.*

21. *Id.*

22. *Id.*

23. Aaron Morrison, *Black Women Notch Historic Senate Wins in an Election Year Defined by Potential Firsts*, AP NEWS (Nov. 6, 2024, 11:42 AM CDT), <https://apnews.com/article/election-2024-historic-firsts-lisa-blunt-rochester-angela> [<https://perma.cc/TAM5-FKGD>].

24. Julianna D'Addona, *Her Impact: What Women Accomplished During the 2024 Election Season*, HER CAMPUS (Nov. 16, 2024), <https://www.hercampus.com/school/uconn/her-impact-what-women-accomplished-during-the-2024-election-season> [<https://perma.cc/MJ2S-F4X7>].

25. Makenzie Huber, *South Dakota Breaks Record for Number of Women Elected to the State Legislature*, S.D. SEARCHLIGHT (Nov. 7, 2024), <https://southdakotasearchlight.com/2024/11/07/south-dakota-breaks-record-number-women-elected-state-legislature/> [<https://perma.cc/8M5S-SFLK>].

26. Justin de Benedictis-Kessner, *Women are Still Underrepresented in Local Government, Despite a Woman Running for President*, ASH CTR. FOR DEMOCRATIC GOVERNANCE & INNOVATION (Sept. 20, 2024), <https://ash.harvard.edu/articles/women-are-still-underrepresented-in-local-government-despite-a-woman-running-for-president/> [<https://perma.cc/AN7D-VLRV>].

27. Bolor Lkhaajav, *Can Mongolia Boost Women's Representation in its 2024 General Election?*, THE DIPLOMAT (Mar. 1, 2024), <https://thediplomat.com/2024/03/can-mongolia-boost-womens-representation-in-its-2024-general-election/> [<https://perma.cc/U5TQ-MXB3>]; Bulgan Batdorj, *Women MPs in 2024 Election Result*, MONG FOCUS (June 28, 2024), <https://blogs.ubc.ca/mongolia/2024/women-mps-in-2024-election-result> [<https://perma.cc/C5QV-A435>]; Leena Rikkilä Tamang, *In Mongolia, Electoral Reform Ushers in a Record Number of Women to Parliament*, INT'L IDEA (July 11, 2024), <https://www.idea.int/news/mongolia-electoral-reform-ushers-record-number-women-parliament> [<https://perma.cc/B3DD-VHEM>].

28. Lkhaajav, *supra* note 27; Tamang, *supra* note 27.

29. Penn, *supra* note 15.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

WOMEN'S INTEREST NETWORK 205

death in police custody led to more legal restrictions and extensive use of AI to further police women, increase restrictions on free expression, and restrict women's political participation.³⁰

B. LEGAL EQUALITY IN CONSTITUTIONS AND LAWS

Women enjoy “less than two-thirds of the legal rights available to men” which is less than “three quarters as previously estimated”³¹ due to multiple societal factors, including “gender disparities in entrepreneurship and employment, domestic violence, sexual harassment, the persistent gender pay gap, as well as reduced female ownership of and control over assets and land.”³² Women, Business and the Law (WBL), a World Bank project that collects data and measures gender inequality³³ updates an index using eight indicators “structured around women’s interactions with the law as they move through their lives and careers: mobility, workplace, pay, marriage, parenthood, entrepreneurship, assets, and pension” to account for legal reforms.³⁴ From the previous year, the score improved from a 77.1 to a 77.9 (out of 100), the most significant annual improvement since the COVID-19 pandemic.³⁵

1. Right to Economic and Social Equality

Progress towards equality has been slow, uneven, and more recently reversed.³⁶ In its quinquennial *World Survey on the Role of Women in Development* report, UN Women found that persistent inequalities contribute to slowed progress and overall inability to close the gender gap.³⁷ UN Women reports that extreme poverty³⁸

30. Iran: Two Years after ‘Woman Life Freedom’ Uprising, Impunity for Crimes Reigns Supreme, AMNESTY INT’L (Sept. 11, 2024), <https://www.amnesty.org/en/latest/news/2024/09/iran-two-years-after-woman-life-freedom-uprising-impunity-for-crimes-reigns-supreme> [<https://perma.cc/H5A9-EHUZ>]; Iran: Backsliding on UN Free Expression Commitments, IMPACT IRAN, https://upr-info.org/sites/default/files/documents/2017-10/article_19_mid-term_report.pdf [<https://perma.cc/36SN-ARG7>] (last visited Apr. 26, 2025).

31. INT’L BANK FOR RECONSTRUCTION & DEV., WORLD BANK GRP., WOMEN, BUSINESS, AND THE LAW 2024 1 (2024), <https://openknowledge.worldbank.org/bitstreams/9bc44005-2490-41f8-b975-af35cbae8b9a/download> [<https://perma.cc/Y2UQ-VF9R>] (last visited Dec. 1, 2024).

32. *Id.* at 42.

33. Women, Business and the Law, About Us, WORLD BANK GRP., <https://wbl.worldbank.org/en/aboutus> [<https://perma.cc/YYV7-HFR4>] (last visited Dec. 1, 2024).

34. WOMEN, BUSINESS, AND THE LAW 2024, *supra* note 31, at 3.

35. *Id.* at 43.

36. WORLD BANK GRP., GENDER STRATEGY 2024 – 2030: ACCELERATED GENDER EQUALITY TO END POVERTY ON A LIVABLE PLANET 12 (2024), <https://documents.worldbank.org/en/publication/documents-reports/document-detail/099061124182033630/bosib1-7e6952570c51b49812a89c05be6a4> [<https://perma.cc/QYW6-P6SM>] (last visited Dec. 1, 2024).

37. SILKE STAAB ET AL., UN WOMEN, HARNESSING SOCIAL PROTECTION FOR GENDER EQUALITY, RESILIENCE, AND TRANSFORMATION 141 (Resch & Data Section, UN Women, ed., 2024), <https://www.unwomen.org/en/digital-library/publications/2024/10/world-survey-on-the-role-of-women-in-development-2024> [<https://perma.cc/K2QV-DHQB>].

38. Extreme poverty refers to the global poverty line whereby a household is considered poor if the per capita consumption or income of its members falls below \$2.15 per day. *Id.* at 23.

disproportionately affects women and girls at all stages of life, and in 2024 there are projected to be approximately twenty-two million more poor females than males globally.³⁹ Multi-layered crises, fragility, and global conflict exacerbate barriers to economic opportunities for women such that women experiencing these conditions are 7.7 times more likely to live in extreme poverty.⁴⁰ Per the World Bank, achieving gender equality is “central to ending poverty on a livable planet.”⁴¹

Women and girls’ vulnerability to economic disadvantage is inseparable from multiple intersecting inequalities and ignoring such constraints on women’s economic prospects undermines poverty reduction efforts.⁴² In seventy-seven countries women are not legally allowed to work, exacerbating sectoral segregation and the gender wage gap.⁴³ In most countries, women that do work are often “informal workers,”⁴⁴ and are half as likely as men to have full-time jobs, and earn seventy-seven cents on the dollar that men earn.⁴⁵ Women carry almost three times as much unpaid care and domestic work as men which has significant consequences on women and girls’ economic prospects.⁴⁶ Gender-based violence such as sexual harassment in transport, public spaces, and the workplace acts as a deterrent for women’s economic participation.⁴⁷ A one percent increase in the share of women experiencing gender-based violence can reduce economic activity by up to nine percent.⁴⁸

2. Marriage Rights

The right to marry and form a family, to freely and fully consent to marriage, and to acquire equal treatment under the law with respect to both marriage and its dissolution are enshrined in Article 16 of the Universal Declaration of Human

39. *Id.* (finding that if current trends continue, eight percent of women and girls will continue to live in extreme poverty in 2030, compared to 7.6% of men and boys).

40. *See id.*

41. WOMEN, BUSINESS, AND THE LAW 2024, *supra* note 31, at 40.

42. *Id.* at 42.

43. *Id.* at 69; *see also* STAAB, *supra* note 37, at 56; *see* PROGRESS ON THE SUSTAINABLE DEVELOPMENT GOALS: THE GENDER SNAPSHOT 2024, *supra* note 4, at 6 (finding that in 2022, only sixty-three percent of women aged twenty-five to fifty-four were participating in the labor force, compared to ninety-one percent of men in the same age block).

44. *See* STAAB, *supra* note 37, at 19 (finding that in low-income countries, informal work constitutes 92.1% of women’s employment compared to 86.7% of men’s employment).

45. *Equal Pay for Work of Equal Value*, UN WOMEN, <https://www.unwomen.org/en/news/in-focus/csw61/equal-pay> [<https://perma.cc/2UJ7-N4BY>] (last visited Apr. 26, 2025).

46. *See* STAAB, *supra* note 37, at 26.

47. WOMEN, BUSINESS, AND THE LAW 2024, *supra* note 31, at 40.

48. *See* Int’l Monetary Fund, *IMF Strategy Toward Mainstreaming Gender*, IMF POLICY PAPER NO. 2022/037, 23 (2022), <https://www.imf.org/en/Publications/Policy-Papers/Issues/2022/07/28/IMFStrategyTowardMainstreamingGender521344> [<https://perma.cc/WUK7-DEHV>] (last visited Nov. 20, 2024).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

WOMEN'S INTEREST NETWORK 207

Rights (UDHR).⁴⁹ Child marriage is a form of forced marriage⁵⁰ and disproportionately affects girls and women.⁵¹ Per UNICEF, an estimated 640 million girls and women alive today were married as children.⁵² At the current rate, child marriage will not be eradicated for another 300 years.⁵³

On July second, Sierra Leone passed the Prohibition of Child Marriage Act, enacting severe penalties, including fines and potential jail time, for adults who bring about or enable the marriage of a minor, including the adult spouse, parents, officiants, and even wedding guests.⁵⁴ The law also prohibits men from living with girls under the age of eighteen⁵⁵ and provides compensation for girls who are married or become pregnant as minors.⁵⁶

On November 12th, the Belizean legislature passed an amendment to the Marriage Act, raising the marriage age from sixteen to eighteen.⁵⁷ On November 13th, Colombian lawmakers outlawed child marriage, approving the bill known as “Son niñas, no esposas” (*They’re girls, not wives*).⁵⁸ The prior law allowed minors as young as fourteen to be married with parental consent.⁵⁹

The recognition and extension of full marriage rights to same-sex couples is another aspect of equal rights in marriage.⁶⁰ Thirty-eight nations legally recognize

49. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, at art. 16 (Dec. 10, 1948).

50. *Child and Forced Marriage, Including in Humanitarian Settings*, U.N. OFF. OF THE HIGH COMM’R FOR HUM. RTS., <https://www.ohchr.org/en/women/child-and-forced-marriage-including-humanitarian-settings> [<https://perma.cc/R2CU-BB9W>] (last visited Dec. 1, 2024).

51. U.N. Secretary-General, *Issue of Child, Early and Forced Marriage: Report of the Secretary-General*, U.N. Doc. A/79/1308, ¶ 21 (Aug. 9, 2024).

52. *Id.* ¶ 3.

53. *Id.*

54. Amelia Nierenberg, *How to Stop Child Marriage? Punish Husbands, Parents and Wedding Guests*, N.Y. TIMES (July 3, 2024), <https://www.nytimes.com/2024/07/03/world/africa/child-marriage-sierra-leone-africa.html> [<https://perma.cc/76ER-FMMW>]; The Prohibition of Child Marriage Act 2024, Sierra Leone Gazette Extraordinary, No. 40, pt. II, §§ 2–10 (2024) [hereinafter Prohibition of Child Marriage Act].

55. Prohibition of Child Marriage Act, *supra* note 54, pt. III.

56. *Id.* pt. V.

57. William Ysaguirre, *Belize Ends Child Marriage*, AMANDALA (Nov. 17, 2024), <https://amandala.com.bz/news/belize-ends-child-marriage> [<https://perma.cc/3WNQ-4S39>].

58. *Plenario del Senado Aprobó la Ley, ‘Son Niñas No Esposas’*, CONG. OF THE REPUBLIC OF COLOM. (Nov. 13, 2024), <https://www.senado.gov.co/index.php/el-senado/noticias/5993-plenaria-del-senado-aprobo-la-ley-son-ninas-no-esposas> [<https://perma.cc/VE8Q-MN4Z>].

59. See Juan Miguel Hernández Bonilla, *Colombia Prohibe El Matrimonio Infantil: ‘Son Niñas, No Esposas’*, EL PAÍS (Nov. 13, 2024), <https://elpais.com/america-colombia/2024-11-14/colombia-prohibe-el-matrimonio-infantil-son-ninas-no-esposas.html> [<https://perma.cc/C5XA-PDYE>]; see also Luke Taylor, *Colombia Outlaws Child Marriage After 17-year Campaign*, GUARDIAN (Nov. 14, 2024), <https://www.theguardian.com/society/2024/nov/14/colombia-outlaws-child-marriage-after-17-year-campaign-under-18> [<https://perma.cc/J64Q-QVK3>].

60. *Marriage Equality Around the World*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/marriage-equality-around-the-world> [<https://perma.cc/FU4K-J78R>] (last visited Nov. 18, 2024).

same-sex marriage.⁶¹ On February 15th, Greece's legislature voted to legalize same-sex marriage, the first Christian Orthodox majority country to do so.⁶² On May 16th, Liechtenstein's parliament passed a bill recognizing same-sex marriage; royal assent for the law followed on July ninth.⁶³ On September 24th, Thailand's king ratified a law legalizing same-sex marriage,⁶⁴ passed by the parliament on June 18th, making Thailand the first Southeast Asian nation to do so.⁶⁵

3. *Right to Health*

According to the United Nations High Commissioner for Refugees, "[m]ore than 120 million individuals have been forcibly displaced worldwide as a result of persecution, conflict, violence or human rights violations."⁶⁶ This is "the highest level of displacement on record."⁶⁷ One in five women forcibly displaced experience sexual violence while fleeing conflict.⁶⁸

In Sudan, the need for services for gender-based violence has grown; sixty-four percent of female-led households experience food insecurity; 1.63 million women of reproductive age go without adequate healthcare; and eighty percent of women are unable to access clean water.⁶⁹ As the crisis in Gaza intensifies, an estimated 155,000 pregnant and breastfeeding women go without health services.⁷⁰ Displacement results in women and girls experiencing unwanted pregnancies and sexually

61. *Id.* (identifying thirty-six nations as having legalized same-sex marriage). In addition to the countries identified by the Human Rights Campaign, Liechtenstein and Thailand legalized same-sex marriage in 2024. See discussion *infra* p. 107.

62. James Gregory, *Greece Legalizes Same-Sex Marriage*, BBC NEWS (Feb. 15, 2024), <https://www.bbc.com/news/world-europe-68310126> [<https://perma.cc/2X67-5B3S>].

63. Jenny Gesley, *Liechtenstein: Marriage Act Amended to Allow Same-Sex Marriage*, LIBR. OF CONG. (Aug. 14, 2024), <https://www.loc.gov/item/global-legal-monitor/2024-08-14/liechtenstein-marriage-act-amended-to-allow-same-sex-marriage> [<https://perma.cc/J7ZL-ZB9X>].

64. See Kelly Ng, *Thai King Signs Same-Sex Marriage Bill into Law*, BBC NEWS (Sept. 23, 2024), <https://www.bbc.com/news/articles/cn03we6zpk1o#> [<https://perma.cc/YW2K-LBB6>].

65. Kyle Knight & Sinai Phasuk, *Victory for Same-Sex Marriage in Thailand*, HUM. RTS. WATCH (June 18, 2024), <https://www.hrw.org/news/2024/06/18/victory-same-sex-marriage-thailand> [<https://perma.cc/9MET-N2ZJ>].

66. *Refugee Statistics: Global Trends At-a-Glance*, USA FOR UNHCR, <https://www.unrefugees.org/refugee-facts/statistics> [<https://perma.cc/4LCD-737B>] (last visited Dec. 1, 2024).

67. *Id.*

68. *The Number of Forcibly Displaced People Has Reached a Staggering Number—Over 117 Million According To UNHCR—and The Number Only Continues to Rise*, WOMEN FOR WOMEN INT'L (June 27, 2023), <https://womenforwomen.org.uk/blog/5-facts-about-what-refugee-women-face> [<https://perma.cc/BWC7-5XGV>].

69. Press Release, U.N. Women, *Sudan Humanitarian Crisis Has Catastrophic Impact for Women and Girls, with Two-Fold Increase of Gender-Based Violence* (Sept. 27, 2024), <https://www.unwomen.org/en/news-stories/press-release/2024/09/sudan-humanitarian-crisis-has-catastrophic-impact-for-women-and-girls-with-two-fold-increase-of-gender-based-violence> [<https://perma.cc/8ZD2-MQ26>].

70. U.N. WOMEN, *Gender Alert: Gaza: A War on Women's Health* 6 (Sept. 2024), <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2024/09/gender-alert-gaza-a-war-on-womens-health/gender-alert-gaza-a-war-on-womens-health-en.pdf> [<https://perma.cc/J6QR-ZTJC>].

transmitted diseases.⁷¹ The risks for complications, disease, disability, and even death increase.⁷²

II. Gender-Based and Sexual Violence, Sexual Harassment, and Assault

Gender-based violence is a pervasive human rights violation, encompassing physical, sexual, mental, or economic harm as a result of one's biological sex or gender identity.⁷³ Approximately one in three women are subjected to physical or sexual intimate partner violence or non-partner sexual violence, at least once in their lifetime;⁷⁴ less than forty percent of women victims seek help.⁷⁵

A. SEXUAL HARASSMENT

1. Domestic Sexual Harassment Laws

In 2024 litigation against the Biden administration's effort to strengthen protections against sex-based discrimination in educational settings increased.⁷⁶ On April twenty ninth, the Department of Education (DOE) promulgated a Rule under Title IX entitled "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance" (the Rule),⁷⁷ expanding the definition of sex-based harassment in educational settings to include discrimination on the basis of sexual orientation and gender identity.⁷⁸ The Rule defines "the basis of sex" as "the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity,"⁷⁹ and prohibits "hostile environment harassment," defined as "unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe

71. See Allison Ruby Reid-Cunningham, *Rape as a Weapon of Genocide*, 3:3 GENOCIDE STUD. & PREVENTION: AN INT'L J. 278, 285–86 (2008).

72. *Sexual and Reproductive Health and Rights*, WOMEN'S REFUGEE COMM'N, <https://www.womensrefugeecommission.org/focus-areas/sexual-reproductive-health-rights> [https://perma.cc/KV5S-LDRX] (last visited Apr. 26, 2025).

73. See Meghan Ott, *Series: What Does That Mean? Gender-based Violence*, WOMEN FOR WOMEN (June 4, 2021), <https://www.womenforwomen.org/blogs/series-what-does-mean-gender-based-violence> [https://perma.cc/XDW9-Z7FW].

74. Press Release, U.N. Women, *Devastatingly Pervasive: 1 in 3 Women Globally Experience Violence* (Mar. 9, 2021), <https://www.who.int/news/item/09-03-2021-devastatingly-pervasive-1-in-3-women-globally-experience-violence> [https://perma.cc/5L3C-5BB6].

75. *Facts and Figures: Ending Violence Against Women*, UN WOMEN (Nov. 25, 2024), <https://www.unwomen.org/en/articles/facts-and-figures/facts-and-figures-ending-violence-against-women> [https://perma.cc/9G76-UGTE].

76. Eliza Kaye et al., *What Should Educational Institutions Do Next for Title IX Now That Biden's Final Rule Was Blocked by a Federal Judge?*, LITTER (Jan. 14, 2025), <https://www.littler.com/news-analysis/asap/what-should-educational-institutions-do-next-title-ix-now-bidens-final-rule-was> [https://perma.cc/2FTL-XWXQ].

77. *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 89 Fed. Reg. 33474 (Apr. 29, 2024) (to be codified at 34 C.F.R. pt. 106).

78. *Dep't of Educ. v. Louisiana*, 603 U.S. 866, 867 (2024).

79. *Nondiscrimination on the Basis of Sex*, 89 Fed. Reg. 33886 (Apr. 29, 2024).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

210 THE YEAR IN REVIEW

[VOL. 59]

or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment)."⁸⁰

With its expanded definition of sex-based harassment, the Rule protects students from the refusal to use a student's preferred pronoun,⁸¹ and provides that schools may not prevent "a person from participating in an education program or activity consistent with the person's gender identity,"⁸² including access to "restrooms and locker rooms, access to classes and activities, and policies such as appearance codes (including dress and grooming codes)."⁸³ Several states and other parties were granted preliminary injunctions against the Rule on the ground that the DOE exceeded its authority to expand its protection to harassment based on gender identity.⁸⁴ On August 16th, the U.S. Supreme Court upheld the stay.⁸⁵ Efforts to strengthen protections against sexual harassment based on gender identity in educational settings are stalled in the United States.⁸⁶

2. *Regional and International Sexual Harassment Laws*

The International Labour Organization's (ILO) ILO Convention No. 190 (C 190), adopted in 2019 so that every individual may work without fear of violence or harassment, has spread more quickly than any other in the past decade, with forty-five ratifications in five years.⁸⁷

In September the U.S. Department of Labor (DOL) announced a USD 1.4 million "FARE" funding award to four community organizations to address gender-based violence and harassment against underserved and disenfranchised women workers.⁸⁸ In the UK the Worker Protection Act 2023 came into effect on October 26,⁸⁹ requiring employers to take reasonable steps to prevent sexual harassment of employees in the course of their employment.⁹⁰

80. *Id.* at 33884.

81. *Id.* at 33516.

82. *Id.* at 33887.

83. *Id.* at 33816.

84. Kaye, *supra* note 76.

85. *Dep't of Educ.*, 603 U.S. at 869.

86. Kaye, *supra* note 76.

87. As of November 2024, forty-five countries have ratified the International Labour Organization's Convention No. 190. See Int'l Lab. Org. [ILO], *Violence and Harassment Convention*, art 2, ILO NO. C190 (June 10, 2019), https://www.ilo.org/dyn/normlex/en/f?p=normlex-pub:12100:0::no::p12100_ilo_code:c190 [<https://perma.cc/SZP9-YJ8K>].

88. See Press Release, U.S. Dep't. of Lab., US Department of Labor Announces \$1.4M in Grants to Prevent, Respond to Workplace Gender-based Violence, Harassment (Sept. 11, 2024), <https://www.dol.gov/newsroom/releases/wb/wb20240911> [<https://perma.cc/RLL5-SMAH>].

89. Worker Protection (Amendment of Equality Act 2010) Act 2023, c. 51 (UK).

90. *Id.* § 1.

B. ELIMINATION OF VIOLENCE AGAINST WOMEN

In 2024 several reports addressed the impact of modern drivers of violence against women and girls: technology⁹¹ and climate change.⁹² In 2024, twenty-four measures addressing violence against women were enacted across sixteen countries,⁹³ three of which specifically handle technology-facilitated violence.⁹⁴

1. Domestic Violence as a Criminal Offense

In April the European Parliament adopted Directive 2024/1385, the first EU-wide framework establishing comprehensive measures to combat violence against women and domestic violence.⁹⁵ The Directive mandates the criminalization of female genital mutilation, forced marriage, and various forms of cyber violence, including the non-consensual sharing of intimate images and cyberstalking.⁹⁶ It also sets minimum standards for victim protection and support services, aiming to harmonize legal definitions and penalties of gender-based violence across member states.⁹⁷

In Kazakhstan the conviction of former economy minister Kuandyk Bishimbayev for the murder of his wife, Saltanat Nukenova, spurred legal reforms addressing domestic violence and led to the enactment of a law referred to as Kazakhstan's

91. See, e.g., Chidinma F. Chikwe et al., *Conceptual Framework for Global Protection against Technology-enabled Violence against Women and Girls*, 11(02) INT'L J. SCI. & RSCH. ARCHIVE 279, 279–280 (2024); Megan Hughes, *How Technology Can Enable Violence Against Women and Girls*, CTR. FOR EMERGING TECH. & SEC. (Aug. 21, 2024), <https://cetas.turing.ac.uk/publications/how-technology-can-enable-violence-against-women-and-girls> [https://perma.cc/9UZC-T5LY].

92. See, e.g., *Domestic Violence in Sub-Saharan Africa will Triple by 2060 Due to Extreme Heat Epidemic and Stalling Development*, New UNFPA Research Finds, UNFPA: PRESS RELEASE (Sept. 5, 2024), <https://www.unfpa.org/press/domestic-violence-sub-saharan-africa-will-triple-2060-due-extreme-heat-epidemic-and-stalling> [https://perma.cc/RW3H-FJYF].

93. *Global Database on Violence Against Women*, U.N. WOMEN, <https://data.unwomen.org/global-database-on-violence-against-women/data-form> [https://perma.cc/CT8D-YFSU] (last visited Nov. 14, 2024) (filtering search to measures “Enacted In 2024”).

94. See *Comprehensive Law Against Violence Against Women / Ley Integral Contra la Violencia Hacia las Mujeres*, U.N. WOMEN (2024), <https://data.unwomen.org/global-database-on-violence-against-women/country-profile/Chile/measures> [https://perma.cc/3TGQ-5XRV] (Chile measure enacted in March 2024); *National Strategy Against Trafficking in Persons (2024-2028)*, U.N. WOMEN (2024), [https://data.unwomen.org/global-database-on-violence-against-women/country-profile/Romania/measures/National%20Strategy%20Against%20Trafficking%20in%20Persons%20\(2024%20-%202028\)](https://data.unwomen.org/global-database-on-violence-against-women/country-profile/Romania/measures/National%20Strategy%20Against%20Trafficking%20in%20Persons%20(2024%20-%202028)) [https://perma.cc/LME8-5TRY] (Romania measure enacted in 2024); *Policy Action to Address Technology-facilitated Trafficking in Human Beings*, ORG. FOR SEC. & CO-OPERATION EUR. (OSCE) (2024), <https://www.osce.org/files/f/documents/8/d/5791-900.pdf> [https://perma.cc/9M3J-637R].

95. Directive 2024/1835, of the European Parliament and of the Council of 14 May 2024 on Combating Violence Against Women and Domestic Violence, 2024 O.J. (L series) 1, 1.

96. *Id.* at 2, ¶ 9.

97. *Id.*

“domestic violence” law.⁹⁸ This law amends the Criminal Code, the Law on the Prevention of Domestic Violence, and other related statutes.⁹⁹ It reinstates criminal penalties for “battery” and “intentional infliction of light bodily harm” when committed against “an individual in a helpless condition or financially or otherwise dependent on the perpetrator,” provisions frequently applied in domestic violence cases and introduces harsher penalties for convicted abusers.¹⁰⁰

2. *Online Abuse and Violence*

Technology-facilitated gender-based violence refers to digital attacks amplified through information and communication technologies, targeting individuals based on gender.¹⁰¹ Eighty-five percent of women have witnessed online violence, and thirty-eight percent have been directly targeted.¹⁰² A report by the Institute for Strategic Dialogue (ISD) revealed a significant rise in digital hate, harassment, and sexual assault threats against women following Donald Trump’s victory over Vice President Kamala Harris in the 2024 U.S. presidential election.¹⁰³ “Sexist phrases like ‘repeal the 19th [Amendment]’ and ‘get back to the kitchen’ surged on platforms like X (formerly Twitter), TikTok, Facebook, and Reddit.”¹⁰⁴ Mentions of “Your body, my choice” increased by over 4,600% on X.¹⁰⁵

Authorities are failing to address gender-based online blackmail and harassment, protect women’s digital privacy, or provide redress.¹⁰⁶ In Yemen women faced online blackmail and harassment involving the non-consensual sharing of images or sensitive information.¹⁰⁷ Abusers sought to extort money, coerce survivors into intimate relationships, or silence the victims by threatening to share photos showing the women with or without a hijab or niqab, exposing parts of their body.¹⁰⁸

98. *Kazakhstan: New Law to Protect Women Improved, but Incomplete*, HUM. RTS. WATCH: NEWS RELEASE (Apr. 23, 2024, 2:41 AM), <https://www.hrw.org/news/2024/04/23/kazakhstan-new-law-protect-women-improved-incomplete> [<https://perma.cc/TY42-ENUZ>].

99. *Id.*

100. *Id.*

101. *Technology-Facilitated Gender-Based Violence: A Growing Threat*, UNFPA, <https://www.unfpa.org/TFGBV> [<https://perma.cc/AZ36-GV6P>] (last visited Apr. 9, 2025).

102. *Measuring the Prevalence of Online Violence against Women*, THE ECONOMIST: INTELLIGENT UNIT (Mar. 1, 2021), <https://onlineviolencewomen.eiu.com/> [<https://perma.cc/52SQ-DAKB>].

103. Noël James & Uma Fox, *Women This Week: Online Abuse Against Women Surges After U.S. Election, November 2024*, COUNCIL ON FOREIGN RELS. (Nov. 15, 2024, 3:30 PM), <https://www.cfr.org/blog/women-week-online-abuse-against-women-surges-after-us-election> [<https://perma.cc/5N6S-BZ79>].

104. *Id.*

105. *Id.*

106. *Yemen: Authorities and Meta Must Address Online Gender-Based Violence*, AMNESTY INT’L (Nov. 5, 2024), <https://www.amnesty.org/en/latest/news/2024/11/yemen-authorities-and-meta-must-address-online-gender-based-violence> [<https://perma.cc/555J-PYFS>].

107. *Id.*

108. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

WOMEN'S INTEREST NETWORK 213

Some abusers fabricated images of the victims.¹⁰⁹ All are considered “shameful” in Yemeni society thus endangering victims.¹¹⁰

III. Human Trafficking

The International Labor Organization (ILO) estimated the annual profit generated from forced labor to be USD 236 billion¹¹¹ and that 27.6 million people are in forced labor worldwide.¹¹² Women and children are disproportionately affected by human trafficking.¹¹³ Approximately seventy-seven percent of the 6.3 million individuals engaged in forced commercial sexual exploitation are women and girls.¹¹⁴

A. INTERNATIONAL EFFORTS TO COMBAT HUMAN TRAFFICKING

The International Organization for Migration (IOM) and the United Nations Office on Drugs and Crime (UNODC) signed a Statement of Partnership strengthening their cooperation to improve human trafficking, migrant smuggling, border management and security, and terrorism prevention programs.¹¹⁵ Additionally, it seeks to collect, analyze, and utilize data to better serve migrants, Member States, and partners.¹¹⁶ The UNODC aims to eradicate forced labor, human trafficking, and slavery and, by 2025, to end child labor.¹¹⁷ In fact, this effort has stalled.¹¹⁸ Between March 2023 and May 2024 an additional twenty countries were impacted by human trafficking.¹¹⁹ Prevention efforts and international cooperation are weak, but some countries now use tools such as sanctions and arrest warrants to target perpetrators.¹²⁰

109. *Id.*

110. *Id.*

111. *Profits and Poverty: The Economics of Forced Labour*, 2 INT'L LAB. ORG. (2024), https://www.ilo.org/sites/default/files/2024-10/Profits%20and%20poverty%20-%20The%20economics%20of%20forced%20labour_WEB_20241017.pdf [<https://perma.cc/8UY6-RDHF>].

112. *Human Trafficking Hotspots*, THOMSON REUTERS (Jan. 15, 2024), <https://legal.thomson-reuters.com/blog/human-trafficking-article> [<https://perma.cc/2QS6-R9U8>].

113. *Id.*

114. *Id.*

115. *IOM and UNDOC Join Forces to Tackle Human Trafficking and Migrant Smuggling*, U.N.: OFF. DRUGS & CRIME (July 2, 2024), <https://www.unodc.org/unodc/press/releases/2024/July/iom-and-unodc-join-forces-to-tackle-human-trafficking-and-migrant-smuggling.html> [<https://perma.cc/8FN3-KDUJ>].

116. *Id.*

117. *Sustainable Development Goals*, U.N.: UNODC REG'L OFF. FOR SE. ASIA & PAC., <https://www.unodc.org/roseap/en/sustainable-development-goals.html> [<https://perma.cc/LR29-8Q4S>] (last visited Apr. 9, 2025).

118. *Sustainable Development Goals Report 2024*, U.N. 1, 3 (2024), <https://unstats.un.org/sdgs/report/2024/the-sustainable-development-goals-report-2024.pdf> [<https://perma.cc/CPL4-SBAD>].

119. Jason Tower, *Examining the 2024 Annual Trafficking in Persons Report: Progress over Politics*, U.S. INST. PEACE (July 9, 2024), <https://docs.house.gov/meetings/FA/FA06/20240709/117509/HHRG-118-FA06-Wstate-TowerJ-20240709.pdf> [<https://perma.cc/2AJ9-CMFU>].

120. *Id.*

In January the UNODC shifted its approach for addressing smuggling of migrants and trafficking of persons by consolidating its global programs against the same into a new singular global program, Action against Human Trafficking and Migrant Smuggling,¹²¹ through which the UNODC will provide technical assistance, deliver policy work, increase its field presence, build partnerships, and create programming.¹²² As of July there are 152 parties to the Smuggling of Migrants Protocol.¹²³ In March the Prosecutor of the International Criminal Court called for public submissions for a Policy on Slavery Crimes, the first time an international judicial institution committed to formulating a policy to address slavery crimes,¹²⁴ heightening the Office's effectiveness in the investigation and prosecution of these crimes under the Rome Statute.¹²⁵

B. REGIONAL AND TRANSREGIONAL EFFORTS TO COMBAT TRAFFICKING

1. *North America*

In June 2024 the U.S. Department of State released the 2024 Trafficking in Persons Report,¹²⁶ which highlighted the dual nature of digital technology on human trafficking: its enabling of traffickers to expand operations online while also allowing for creation of innovative tools to track and combat trafficking.¹²⁷ The report emphasized the importance of collaboration across sectors to effectively address human trafficking in North America.¹²⁸

2. *Europe*

The Group of Experts on Action Against Human Trafficking in Human Beings (GRETA) launched its 13th General Report covering 2023,¹²⁹ which identified persistent gaps, including limited access to legal aid, insufficient compensation mechanisms for victims, and low numbers of prosecutions and convictions.¹³⁰ In July the revised EU Anti-Trafficking Directive came into force, amending the 2011 EU

121. UNODC *Launches New Action to Combat Human Trafficking and Migrant Smuggling*, U.N.: OFF. ON DRUGS & CRIME (Apr. 22, 2024), <https://www.unodc.org/unodc/en/human-trafficking/Webstories2024/unodc-launches-new-action-to-combat-human-trafficking-and-migrant-smuggling.html> [https://perma.cc/686S-4BK6].

122. *Id.*

123. *See id.*

124. ICC *Office of the Prosecutor Launches Public Consultation on Policy on Slavery Crimes*, INT'L CRIM. CT. (Mar. 19, 2024), www.icc-cpi.int/news/icc-office-prosecutor-launches-public-consultation-policy-slavery-crimes [https://perma.cc/5A7X-JYC6].

125. *Id.*

126. *Trafficking in Persons Report*, U.S. DEP'T OF STATE (2024), <https://www.state.gov/reports/2024-trafficking-in-persons-report> [https://perma.cc/P2J8-ZHSU].

127. *Id.*

128. *Id.*

129. *13th General Report*, GRP. OF EXPERTS ON ACTION AGAINST HUM. TRAFFICKING IN HUM. BEINGS (GRETA) (2024), <https://rm.coe.int/13th-general-report-on-greta-activities-covering-the-period-from-1-jan/1680af7268> [https://perma.cc/9R98-QDAJ].

130. *Id.*

Anti-Trafficking Directive,¹³¹ and introducing stricter criminalization of offenses and equipping public authorities with enhanced tools.¹³²

3. *The Middle East*

Throughout 2024 the ongoing conflict in Gaza disproportionately impacted women and girls.¹³³ Over 10,000 women have died, including 6,000 mothers, leaving 19,000 children orphaned.¹³⁴ Survivors face displacement, starvation, and lack of basic necessities.¹³⁵ More than one million women and girls have no access to clean water, food, or sanitation, worsening their health and safety.¹³⁶ UN Women has documented the same in a series of reports.¹³⁷

Iraqi authorities developed Standard Operating Procedures, through partnership with the UNODC and the European Union (EU), as part of the Global Action to Combat Trafficking in Persons and the Smuggling of Migrants (GLO.ACT), aiming to equip officials with tools to effectively investigate trafficking in persons and smuggling of migrants' cases.¹³⁸

4. *Africa*

In July, Morocco participated in the Blue Heart Campaign's 10th World Day Against Trafficking in Persons which focused on protecting children and adolescents from exploitation, including digital and social media exploitation, via a national awareness initiative.¹³⁹ International Organization for Migration (IOM) organized the first Regional Workshop of the Regional Protection and Development Programme (RDPP)–Phase VI to serve as a coordination platform bringing together child protection and counter-trafficking stakeholders in North Africa along key

131. Directive 2024/1712, of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, 2024 O.J. (L series).

132. *Stronger EU Rules to Fight Trafficking in Human Beings Enter into Force*, EUR. COMM'N (July 12, 2024), <https://home-affairs.ec.europa.eu/news/stronger-eu-rules-fight-trafficking-human-beings-enter-force-2024-07-12> [https://perma.cc/YT66-VS7N].

133. See *Gender Alert: Gender Analysis of the Impact of the War in Gaza on Vital Services Essential to Women's and Girls' Health and Safety*, U.N. WOMEN (Apr. 2024), <https://www.un-women.org/sites/default/files/2024-04/gender-alert-gender-analysis-of-the-impact-of-the-war-in-gaza-on-vital-services-essential-to-womens-and-girls-health-safety-en.pdf> [https://perma.cc/C749-24P].

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Iraq Finalizes Standard Operating Procedures for the Investigation of Trafficking in Persons and the Smuggling of Migrants*, RELIEFWEB (Nov. 11, 2024), <https://reliefweb.int/report/iraq/iraq-finalizes-standard-operating-procedures-investigation-trafficking-persons-and-smuggling-migrants-enar> [https://perma.cc/R929-FZ9H].

139. See *Morocco Reaffirms its Commitment to Combat and Prevent Human Trafficking*, U.N. OFF. ON DRUGS & CRIMES, (July 30, 2024), <https://www.unodc.org/unodc/news/2024/July/morocco-reaffirms-its-commitment-to-combat-and-prevent-human-trafficking.html> [https://perma.cc/BFQ2-5E4L].

migration routes.¹⁴⁰ Policy and operational actors from North Africa and countries along key migration routes exchanged practices, priorities, and challenges encountered in the protection of children and victims of trafficking.¹⁴¹

The TIPSOM project, a major initiative in Nigeria funded by the European Union in 2018 to combat human trafficking and migrant smuggling, concluded in 2024.¹⁴² The project addressed policy development, prevention, victim protection, prosecutions, and international partnerships.¹⁴³ Spanish experts from the National Police significantly contributed to strengthening cooperation, with Spain being a key EU destination country.¹⁴⁴

5. Asia

The UNODC established an Emergency Response Network (ERN) to address rising transnational criminality such as scam operations and cyber fraud in Southeast Asia.¹⁴⁵ Building on the 2023 report,¹⁴⁶ the ERN connects anti-trafficking and cybercrime officers across the region, enabling real-time intelligence sharing and coordinated rescues to dismantle transnational crime networks.¹⁴⁷ The network aims to enhance cooperation and coordination among law enforcement agencies across the region; UNODC and INTERPOL will play supporting roles.¹⁴⁸

IV. Women, Peace, and Security

The year 2025 marks the 25th anniversary of the Women, Peace, and Security (WPS) agenda on the Security Council. The Working Group for the Arab States, including WPS academics, policy experts, and practitioners from Palestine, Syria, Libya, Iraq, Lebanon, and Sudan, met in Geneva from September 30–October 2.¹⁴⁹

140. IOM Organizes a Regional Workshop on the Protection of Trafficking Victims and Children on Migration Routes, IOM UN MIGRATION (Mar. 7, 2024), <https://mena.iom.int/news/iom-organizes-regional-workshop-protection-trafficking-victims-and-children-migration-routes> [https://perma.cc/54TX-DJ2B].

141. *Id.*

142. See TIPSOM: Combatting Trafficking in Persons and Smuggling of Migrants in the EDO State Transportation Industry, INT'L CTR. FOR MIGRATION POL'Y DEV., <https://www.icmpd.org/our-work/projects/combating-trafficking-in-persons-and-smuggling-of-migrants-in-the-edo-state-transportation-industry-tipsom> [https://perma.cc/G6LT-DJP8] (last visited Nov. 16, 2024).

143. *Id.*

144. See *id.*

145. Casinos, Cyber Fraud, and Trafficking in Persons for Forced Criminality in Southeast Asia, U.N. OFF. ON DRUGS & CRIMES (Sept. 2023), https://www.unodc.org/roseap/uploads/documents/Publications/2023/TiP_for_FC_Policy_Report.pdf [https://perma.cc/W9R3-6QSF].

146. See *id.*

147. Scams and Trafficking for Forced Criminality: UNODC Establishes Emergency Response Network to Combat Human Trafficking in Southeast Asia, UNODC (May 15, 2024), <https://www.unodc.org/roseap/en/2024/05/emergency-response-network/story.html> [https://perma.cc/7GUS-ZZDN].

148. *Id.*

149. On the 24th Anniversary of UNSCR 1325, the Women, Peace and Security (WPS) Working Group for Arab States Meets in Geneva to Advance Regional Vision and Policies, U.N. WOMEN (Nov. 4, 2024),

Discussions focused on the need to ensure protection for women activists, human rights defenders, and peace builders to enable their meaningful participation in humanitarian, political, peace, and conflict prevention in the region.¹⁵⁰ A white policy paper to include action recommendations for the implementation of the WPS agenda in the region is being further developed.¹⁵¹

On November 24, the 29th United Nations Climate Change Conference (COP29) held in Baku, Azerbaijan concluded.¹⁵² Participants set a collective goal for climate-related financing to reach USD 300 billion per year by 2035 and acknowledged that climate finance must benefit marginalized groups including women.¹⁵³ Participants renewed their commitment to climate action and policy that is gender-responsive, extending the Enhanced Lima Program on Gender for ten years.¹⁵⁴ This extension was mandated by the Gender and Climate Change Decision and advances gender considerations and gender equality by parties to the Climate Change Convention.¹⁵⁵

The Sudanese government's Unit of Combating Violence Against Women and Children (CVAW) concluded in a September report that sexual violence is being used as a weapon in Sudan's ongoing civil war, creating chaos, forced displacement, and humiliation for victims.¹⁵⁶ A framework integrating economic, psychological, and legal resources is being developed by UN Women and local partners to support women and expand the reach of essential services.¹⁵⁷ The Sudanese Organization for Research and Development (SORD) and UN Women provide women with psychological and medical support.¹⁵⁸

V. International Criminal Courts and Tribunals and Women's Rights Cases

A. INTERNATIONAL CRIMINAL COURT

In June the International Criminal Court (ICC) issued a ruling in a case, the first before it, to charge persecution on the basis of gender as a crime against humanity.¹⁵⁹ The case, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*,

<https://arabstates.unwomen.org/en/stories/press-release/2024/11/on-the-24th-anniversary-of-unscr-1325-the-women-peace-and-security-wps-working-group> [<https://perma.cc/8C63-7NDS>].

150. *Id.*

151. *Id.*

152. See COP29 Decisions Deliver Gains for Gender Equality in Climate Action, but More Remains to Be Done, U.N. WOMEN (Nov. 26, 2024), <https://www.unwomen.org/en/news-stories/news/2024/11/cop29-decisions-deliver-gains-for-gender-equality-in-climate-action-but-more-remains-to-be-done> [<https://perma.cc/6Q4T-V4B7>].

153. *Id.*

154. *Id.*

155. *Id.*

156. *Navigating War, Birth, and Hope in Sudan*, U.N. WOMEN (Nov. 13, 2024), <https://www.unwomen.org/en/news-stories/feature-story/2024/11/navigating-war-birth-and-hope-in-sudan> [<https://perma.cc/ZGY5-UKVF>].

157. *Id.*

158. *Id.*

159. See *Prosecutor v. Al Hassan*, ICC-01/12-01/18, Trial Judgment, ¶ 1 (June 26, 2024).

charged the defendant, a senior member of Ansar Dine's Islamic Police, with, inter alia, crimes against humanity, persecution on the basis of religion and gender, and war crimes during Ansar Dine's and al-Qaeda in the Islamic Maghreb's (AQIM) occupation of Timbuktu in 2012-2013.¹⁶⁰ While the Chamber convicted Mr. Al Hassan of directly committing or contributing to various war crimes and crimes against humanity, it acquitted him of gender-based crimes, including the war crimes of rape and sexual slavery and the crimes against humanity of rape, sexual slavery, and other inhumane acts in the form of forced marriage.¹⁶¹ The Chamber found "women and girls were particularly affected by the situation put into place by Ansar Dine/AQIM."¹⁶² The Chamber acknowledged gender persecution was ongoing at the time of the crimes for which Mr. Al Hassan was convicted.¹⁶³ The decision did not find Mr. Al Hassan criminally liable for these crimes personally, with the panel taking various positions in dissenting opinions.¹⁶⁴

The decision comes after the Office of the Prosecutor launched a new initiative "to advance accountability for the crime against humanity of persecution on the grounds of gender" earlier this year.¹⁶⁵ The initiative's goal is to develop "a comprehensive set of principles on gender persecution to provide guidance for increasing its prevention, and ensuring protection and participation of its survivors."¹⁶⁶ The initial period for external comments concluded in November.¹⁶⁷

160. *Id.* ¶ 9.

161. *Id.* ¶ 1785.

162. *Id.* ¶ 1542.

163. *Id.* ¶ 1580; see also ¶ 1552 (finding that "in the specific contexts of the forced marriages and the subsequent rapes imposed by members of Ansar Dine/AQIM upon women and girls, . . . Ansar Dine/AQIM members committed acts which additionally deprived local women and girls of the fundamental right to bodily integrity, as well as of the right not to be held in slavery or servitude"); ¶¶ 1566-1573 (addressing persecution on gender grounds).

164. See generally *id.*; Compare Al Hassan, ICC-01/12-01/18, Separate and Partly Dissenting Opinion of Judge Akane, ¶ 28 (June 26, 2024) (distinguishing certain gender-based crimes as "opportunistic" as opposed to having been committed as part of Ansar Dine/AQIM's "common purpose"), with Al Hassan, ICC-01/12-01/18, Separate and Partly Dissenting Opinion of Judge Prost, ¶ 26 (June 26, 2024) (explaining that the Majority found that "women and girls . . . were specifically targeted on the basis of their gender" and that the facts supported a conviction for the crime of persecution on the basis of gender).

165. *The Office of the Prosecutor Launches Public Principles to Advance Understanding of the Crime of Gender Persecution*, INT'L CRIM. CT. (Jan. 17, 2024), <https://www.icc-cpi.int/news/office-prosecutor-launches-public-principles-advance-understanding-crime-gender-persecution> [<https://perma.cc/8JY5-F7VH>].

166. *Id.*

167. See *id.*

B. INTER-AMERICAN COURT OF HUMAN RIGHTS

The Inter-American Commission on Human Rights referred the case of *Leonela Zelaya v. Honduras* to the Inter-American Court of Human Rights.¹⁶⁸ The case involves the transfemicide of Leonela Zelaya in 2004.¹⁶⁹

C. EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights (ECHR), the regional judicial institution of the Council of Europe,¹⁷⁰ has been a leader in the global fight against intimate partner violence since its landmark decision in *Opuz v. Turkey*¹⁷¹ (domestic violence), *Rantsev v. Cyprus and Russia*¹⁷² (human trafficking), and the later development and ratification of the Istanbul Convention now in force for ten years.¹⁷³ In 2024, the ECHR heard cases related to the elimination of discrimination against women and girls, intimate partner violence, gender equality, human trafficking, and widespread human rights abuses by Russia in its war against Ukraine, including the forced removal of children from Ukraine.¹⁷⁴ The ECHR ruled in April that Switzerland failed to comply with its obligations under Article 8 of the European Convention on Human Rights concerning climate change.¹⁷⁵ The case was brought by Senior Women for Climate Protection, a Swiss group of over 2,000 women, that claimed their members' quality of life and health, as older women, suffered because of heatwaves exacerbated by the climate crisis.¹⁷⁶

168. Press Release, Inter-Am. Comm'n H.R., IACHR Files Application Before Inter-American Court of Human Rights in Case Concerning Transfemicide of Leonela Zelaya in Honduras and Subsequent Impunity (July 26, 2024), https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2024/170.asp [<https://perma.cc/M45G-TCWB>].

169. *Id.*

170. The Council of Europe is made up of forty-six member nations across the European continent, which included Russia up until its exclusion on March 15, 2022, due to its blatant violations of the Council of Europe statute. See *The Council of Europe: Key Facts*, COUNCIL OF EUR., <https://www.coe.int/en/web/portal/the-council-of-europe-key-facts> [<https://perma.cc/T42A-NHDN>] (last visited May 1, 2025).

171. See *Opuz v. Turkey*, App. No. 33401/02 (June 9, 2009), <https://hudoc.echr.coe.int/fre?i=001-92945> [<https://perma.cc/FTK8-ZYCM>].

172. See *Rantsev v. Cyprus*, App. No. 25965/04 (Jan. 7, 2010), <https://hudoc.echr.coe.int/eng?i=001-96549> [<https://perma.cc/4KY9-34CN>].

173. See Istanbul Convention, *Action against Violence against Women and Domestic Violence: About the Convention*, COUNCIL OF EUR., <https://www.coe.int/en/web/istanbul-convention/about-the-convention> [<https://perma.cc/753F-BVA3>] (last visited Dec. 1, 2024).

174. See Annual Report 2024: European Court of Human Rights, 2024 Eur. Ct. H.R. 67-70, <https://www.echr.coe.int/documents/d/echr/annual-report-2024-eng> [<https://perma.cc/9C5Z-J2RV>].

175. *KlimaSeniorinnen v. Switzerland*, App. No. 53600/20, ¶ 574 (Apr. 9, 2024), <https://hudoc.echr.coe.int/eng?i=001-233206> [<https://perma.cc/BA84-55XF>]; see *Grand Chamber Rulings in the Climate Change Cases*, EUR. CT. H.R. (Apr. 9, 2024), <https://www.echr.coe.int/w/grand-chamber-rulings-in-the-climate-change-cases> [<https://perma.cc/FS8J-KJ68>].

176. Eur. Ct. H.R., *supra* note 173. The Swiss Government has since rejected the ruling. Federal Council Clarifies its Position on the ECHR Ruling on Climate Protection, FED. COUNCIL

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

220 THE YEAR IN REVIEW

[VOL. 59]

D. INTERNATIONAL COURT OF JUSTICE

Australia, Canada, Germany, and the Netherlands announced at the UN General Assembly their intention to bring a case before the International Court of Justice (ICJ) against Afghanistan for violations of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹⁷⁷ An additional twenty-two governments joined in a subsequently issued joint statement, “condemn[ing] the gross and systematic human rights violations and abuses in Afghanistan, particularly the gender-based discrimination against women and girls.”¹⁷⁸

(Aug. 28, 2024), <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-102244.html> [<https://perma.cc/AM2F-HDLE>].

177. Caspar Veldkamp (@ministerBZ), X (Sept. 25, 2024, 3:50 PM), <https://x.com/ministerBZ/status/1839029625806065739> [<https://perma.cc/4VMR-FYST>]; see Alice Johnson, *Afghanistan: Potential ICJ Case a Step Towards Justice for Afghan Women*, INT’L BAR ASS’N (Oct. 24, 2024), <https://www.ibanet.org/afghanistan-icj> [<https://perma.cc/YT6C-F5JV>].

178. *Joint Statement Regarding the Convention on the Elimination of All Forms of Discrimination Against Women*, GOV’T OF CAN. (Sept. 26, 2024), https://www.international.gc.ca/world-monde/international_relations-relations_internationales/un-onu/statements-declarations/2024-09-26-women-femme.aspx [<https://perma.cc/P7EU-PGJX>].

Young Lawyers Interest Network

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This article provides information about upcoming changes to bar examinations administered in the United States.

I. NextGen Bar Exam

Currently, most law school graduates across the United States take the Uniform Bar Exam (UBE) or some component of the UBE as part of the bar exam.² This exam is necessary, in most jurisdictions, to become practicing attorneys.³ But the bar exam is changing, and the UBE will no longer exist in its current form after the February 2028 administration of the bar exam.⁴ The NextGen bar exam will replace the UBE for the July 2028 bar exam.⁵

According to the National Conference of Bar Examiners (NCBE), the NextGen bar exam will test a broad range of foundational lawyering skills, concepts, and principles.⁶ Initially, family law was slated to be removed as a doctrinal subject area for the NextGen Bar, but NCBE has stated that the exam will continue to include family law as a foundational subject, which means that test takers will be expected to know the subject in depth.⁷ The subjects of trust and estates,⁸ conflicts of laws, and secured transactions, however, will no longer be tested as stand-alone doctrinal subjects but will be incorporated into questions that test takers will encounter

1. Author and editor of this article and of the ABA International Law Section's Young Lawyers Interest Network, Co-Chair of Publications.

2. See *Uniform Bar Examination*, UNIFORM BAR EXAMINATION, <https://www.ncbex.org/exams/ube> [<https://perma.cc/92C9-XZ7Y>] (last visited Mar. 7, 2025).

3. See *About the UBE*, UNIFORM BAR EXAMINATION, <https://www.ncbex.org/exams/ube/about-ube> [<https://perma.cc/9LPE-VHQS>] (last visited Mar. 7, 2025).

4. See Julianne Hill, *NCBE Extends Current Bar Exam Until 2028, NextGen Test Will Include Family Law*, ABA JOURNAL (Oct. 26, 2023), <https://www.abajournal.com/web/article/nextgen-exam-will-include-family-law-reversing-earlier-ncbe-decision> [<https://perma.cc/Z94L-342U>].

5. See *Implementing the NextGen Bar Exam 2022–2028*, NCBE (July 2026), <https://www.ncbex.org/exams/nextgen-july-2026/about/implementation-timeline> [<https://perma.cc/WC4U-76PB>] (last visited Nov. 30, 2024).

6. *About the NextGen Bar Exam*, NCBE, <https://www.ncbex.org/exams/nextgen> [<https://perma.cc/3JTQ-9DLE>] (last visited Mar. 7, 2025).

7. *Id.*

8. See *id.* (stating that between July 2026 and February 2028 trusts and estates will appear on every NextGen exam in a performance task and may also be in an integrated question set).

through research materials or other skills-based sections of assessment.⁹ Additionally, the NextGen bar exam will be three hours shorter than the UBE.¹⁰ The UBE is a two-day exam consisting of two three-hour sessions each day.¹¹ The NextGen bar exam, in comparison, will consist of two three-hour sessions on the first day and one three-hour session on the second day.¹²

If you are a graduating student in a jurisdiction where the NextGen bar exam is not expected to be administered until 2027 or 2028, the transferability of your passing UBE score may be a concern.¹³ The NCBE has stated that, during the transition period to the NextGen bar exam, some jurisdictions will accept both scores, and current UBE scores will remain valid until an expiration date is set by participating jurisdictions, but not all jurisdictions may permit score transfers.¹⁴ To date, it has not been made clear which jurisdictions that are administering the NextGen bar exam by 2028 will permit the transfer of passing UBE scores or how long those scores will be transferrable.

In October 2024, the first prototype NextGen exam was administered in thirty-two jurisdictions to selected individuals who took the July 2024 bar exam.¹⁵ This was done to provide valuable information to each jurisdiction to inform decisions about the pass or cut score required for admission.¹⁶ As of October 2024, only twenty-seven jurisdictions are set to administer the NextGen bar exam by 2028, including Florida.¹⁷ Seven jurisdictions are set to have the first administration of the NextGen bar exam in July 2026,¹⁸ and at least one jurisdiction has opted to create its own multiple-choice questions for its February 2025 bar exam.¹⁹

9. Hill, *supra* note 4.

10. See *About the NextGen Bar Exam*, *supra* note 6.

11. *Understanding the Uniform Bar Exam*, NCBE, https://www.ncbex.org/sites/default/files/2023-01/Understanding_the_UBE_2022.pdf [<https://perma.cc/N4P4-8FXB>] (last visited Mar. 7, 2025).

12. See *About the NextGen Bar Exam*, *supra* note 6.

13. See *id.*

14. *About the NextGen Bar Exam*, NEXTGEN BAR, <https://www.ncbex.org/exams/nextgen/about-nextgen> [<https://perma.cc/9BE4-APES>] (last visited Mar. 7, 2025).

15. *NextGen Prototype Exam: Help Shape the Future of the Legal Profession*, NEXTGEN (Sept. 13, 2024), <https://nextgenbarexam.ncbex.org/nextgen-prototype-exam-october-2024/> [<https://perma.cc/GU24-WDBQ>].

16. *NCBE Publishes Results of NextGen Field Test Research*, NCBE (Oct. 16, 2024), <https://www.ncbex.org/news-resources/ncbe-publishes-results-nextgen-field-test-research> [<https://perma.cc/YAL9-WGNS>].

17. See *About the NextGen Bar Exam*, *supra* note 6.

18. See *id.* (listing the jurisdictions administering the NextGen bar in July 2026 as Connecticut, Guam, Maryland, Missouri, Northern Mariana Islands, Oregon, and Washington).

19. See Karen Sloan, *California Finalizes Deal to Give its Own Bar Exam*, REUTERS (Aug. 14, 2024), <https://www.reuters.com/legal/government/california-finalizes-deal-give-its-own-bar-exam-2024-08-14/> [<https://perma.cc/8XGD-G5J5>].

II. California

One jurisdiction that has decided not to administer the NextGen bar exam is California.²⁰ California has elected to introduce a new version of its bar exam and administer it for the February 2025 bar examination.²¹ In August 2024, Reuters reported that the State Bar of California finalized a five-year, \$8.25 million deal with the test prep company Kaplan Exam Services.²² Kaplan will develop the multiple-choice questions for the California bar exam to replace the Multistate Bar Exam component developed by the NCBE,²³ which will be phased out with the UBE by July 2028.²⁴ As part of the agreement, Kaplan will no longer be permitted to provide bar examination prep services in California.²⁵ Kaplan will provide faculty and student study guides, which the State Bar of California will distribute for free.²⁶ The State Bar of California stated that the multiple choice questions being developed by Kaplan should not “substantially modify” a tester taker’s preparation for the exam and will be similar to the current version of the exam.²⁷ By formulating its own exam, California plans to administer its bar exam remotely or in test centers around its state, providing greater flexibility to future test takers.²⁸

As of March 19, 2025, California’s February 2025 bar examination, which debuted as a hybrid in-person and remote examination, was tainted by widespread technical and logistical problems, which led the State Bar of California to commission an independent investigation of the exam’s problems.²⁹ Additionally, the California Supreme Court has now decided to step up its oversight of the state’s attorney admissions, which has even led to some test takers filing a proposed class action suit against the exam’s test platform vendor Meazure Learning.³⁰ The new bar exam was meant to save the State Bar of California as much as \$3.8 million annually,³¹ but it is now expected to cost significantly more as the California Supreme Court

20. *Id.*

21. *Id.*

22. *Id.*

23. See *California Bar Exam Experiment*, STATE BAR OF CAL., <https://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Exam-Experiment> (last visited Nov. 30, 2024).

24. Hill, *supra* note 4.

25. Sloan, *supra* note 19.

26. *Id.*

27. *Id.*; see also Press Release, Off. of Comm’n for State Bar of Cal., State Bar, Kaplan, Sign Five-Year California Bar Exam Development Contract (Aug. 23, 2024).

28. Sloan, *supra* note 19.

29. See Karen Sloan, *After Disastrous Bar Exam Rollout, California Supreme Court to Boost Test Oversight*, REUTERS (Mar. 19, 2025), <https://www.reuters.com/legal/government/after-disastrous-bar-exam-rollout-california-supreme-court-boost-test-oversight-2025-03-19/> [<https://perma.cc/M28R-ZGBW>].

30. *Id.*; see also Karen Sloan, *California Bar Exam Test Takers Sue Over ‘Disaster’ Rollout This Week*, REUTERS (Feb. 28, 2025), <https://www.reuters.com/legal/government/california-bar-exam-test-takers-sue-over-disaster-rollout-this-week-2025-02-28/> [<https://perma.cc/ZUU8-N846>].

31. Sloan, *supra* note 29.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

224 THE YEAR IN REVIEW

[VOL. 59]

ordered the July bar to be administered in person and is allowing February bar examinees who failed or withdrew to take the July exam for free.³²

32. *Id.* Additionally, another remedy being considered is awarding provisional licenses to February 2025 examinees. See Julianne Hill, *State Bar of California Considers Provisional Licenses for February Bar Exam Takers*, ABA JOURNAL (Mar. 17, 2025), <https://www.abajournal.com/web/article/first-step-taken-toward-provisional-licensing-for-february-california-bar-candidates> [<https://perma.cc/PA65-CSDP>].

Africa

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I. North Africa

A. ALGERIA

1. *Media Regulation Law*

Enacted in May, Algeria's new penal code imposes severe penalties for disclosing confidential documents on social media or to foreign countries and penalizes actions that undermine military morale; this raises concerns about freedom of expression and citizens' rights.¹

* Committee Editor (Bodley); Algeria (Tossa); Angola (Holmes, Frazão, Miranda, Sampaio, Silva); Benin (Ed.); Botswana (Ed.); Burkina Faso (Ed.); Burundi (Ed.); Cameroon (Ed.); Cape Verde (Frazão, Miranda, Sampaio, Silva, Ed.); CAR (Ed.); Chad (Ed.); Comoros (Ed.); DRC (Barad); Congo (Ed.); Côte d'Ivoire (Ed.); Djibouti (Ed.); Equatorial Guinea (Ed.); Egypt (Fahmy); Eritrea (Ed.); Ethiopia (Hirpa, Tamrat); Gabon (Frazão, Miranda, Sampaio, Silva, Ed.); Gambia (Bah); Ghana (Oduro, Larry); Guinea (Barad); Guinea-Bissau (Ed.); Kenya (Larry); Lesotho (Ed.); Liberia (Ed.); Madagascar (Ed.); Malawi (Bandawe); Mali (Ed.); Mauritania (Holmes); Mauritius (Ed.); Mozambique (Bandawe, Frazão, Miranda, Sampaio, Silva); Namibia (Holmes); Niger (Tossa); Nigeria (Carr, Oduro); Rwanda (Barad); São Tomé and Príncipe (Ed.); Senegal (Ed.); Seychelles (Ed.); Sierra Leone (Gaskins); Somalia (Shayo); South Africa (Bah, Larry); South Sudan (Ed.); Sudan (Ed.); Swaziland (Eswatini) (Ed.); Tanzania (Shayo, Ed.); Togo (Ed.); Tunisia (Fahmy); Uganda (Arop, Hirpa); Western Sahara (Ed.); Zambia (Ed., Kapandula); Zimbabwe (Ed.); Af-CHPR (Ed.); AfComm. (Ed.); AU (Holmes, Gaskins, Hirpa, Larry); ECOWAS (Holmes, Bah); EAC (Ed.); AfDB (Gallerizzo); Afreximbank (Gallerizzo); ECA (Ed.); SADC (Bandawe); COMESA (Ed.); IGAD (Hirpa, Larry); ECCAS (Ed.); UNMICT (Ed.).

1. *Algeria: New Penal Code Amendments Escalate Attack on Freedom of Expression*, ARTICLE19 (Aug. 12, 2024), <https://www.article19.org/resources/algeria-new-penal-code-amendments-escalate-attack-on-freedom-of-expression/> [https://perma.cc/3PHT-98W4].

B. EGYPT

1. *Expanded Military Powers*

In February, Law No. 3 (2024) entered into force giving the military equivalent powers to police; these include trying crimes against critical public facilities in military courts.² Rights groups describe the law as expansive and arbitrary in the powers accorded the military.³

2. *Elderly Rights*

In April, Parliament passed Law No. 19 (2024) to safeguard rights of the elderly, ensuring their civil, political, and socio-economic rights.⁴ The law obliges authorities to comply with domestic and international laws ratified by Egypt protecting the rights of older persons.⁵

C. TUNISIA

1. *Central Bank Undermined*

In February, Parliament amended Law No. 35 (2016) permitting the Central Bank to lend the State seven billion dinars (USD 2.25 billion) to be repaid without interest over ten years after a three-year grace period, thereby addressing a budget deficit of 28.7 billion dinars (USD 9.2 billion).⁶ The move has been criticized for undermining central bank independence as had been guaranteed by the 2016 law.⁷

2. *Maternity Rights Unified*

Published in August, Law No. 44 (2024) extends maternity leave to three months with full salary in the public sector and an allowance in the private sector, allowing an additional month for disability, multiple, or premature births.⁸ Advocates had

2. *Egypt: New Laws Entrench Military Power Over Civilians*, HUM. RTS. WATCH (Mar. 5, 2024), <https://www.hrw.org/ar/news/2024/03/05/egypt-new-laws-entrench-military-power-over-civilians> [<https://perma.cc/ZM85-7EJF>]; Law No. 136 of 2013 (Law Securing and Protecting Public and Vital Establishments and the Jurisdiction of the Military Judiciary in the Crimes against which they Are Committed), *al-Jarīdah al-Rasmīyah*, vol. 43 (Supplement C), 28 Oct. 2024 (Egypt).

3. See *Egypt: New Laws Entrench Military Power Over Civilians*, *supra* note 2.

4. Law No. 19 of 2024 (Law on Protection of Elderly Rights), *al-Jarīdah al-Rasmīyah*, vol. 14, 5 Apr. 2024 (Egypt).

5. *Id.*

6. *La Banque Centrale de Tunisie Autorisée à Financer le Budget* [The Tunisian Central Bank Authorized to Finance the Budget], JEUNE AFRIQUE (Feb. 7, 2024), <https://www.jeuneafrique.com/1534235/politique/la-banque-centrale-de-tunisie-autorisee-a-financer-le-budget/> [<https://perma.cc/V62C-HNJA>].

7. See *id.*

8. Off. J. Tunis. Republic Issue no. 099-2024 p. 2216, Loi no. 2024-044 du 12 août 2024, relative à l'organisation des congés de maternité et de paternité, dans la fonction publique et les public et privé [Law No. 2024-044 of Aug. 12, 2024, relating to the structure of maternity and paternity leave the public and private sectors].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

AFRICA 227

sought the law's adoption since 2011 to align legislation with the International Labor Organization's Maternity Protection Convention.⁹

D. WESTERN SAHARA

1. *UN Mission Re-extended*

In October, the UN Security Council extended the mandate of its Mission for the Referendum in Western Sahara (MINURSO) by another year to October 2025.¹⁰ The Council called on Morocco (which considers the territory its own), the Polisario Front (which seeks a separate state), Algeria, and Mauritania, to negotiate a political solution affording self-determination to the Western Sahara people.¹¹

II. West Africa

A. BENIN

1. *Coup Plot Arrests*

Benin fell two places from 59/100 to 61/100 in Freedom House's 2024 Freedom in the World report.¹² It is now ranked as "partly free" after President Patrice Talon began using the normally stable democracy to attack political opponents after taking office in 2016 and thereafter consolidated power in 2021.¹³ In September, the prosecutor arrested three close associates for allegedly plotting a coup.¹⁴ Of the three, businessman Olivier Boko and former sports minister Oswald Homeky were jailed for "conspiracy against state security, corruption of public funds and money laundering."¹⁵

9. Mohamed Rami Abdel Mawla, *The New Law on Maternity and Paternity Leave in Tunisia: Gains, Shortcomings, and Considerations*, ASSAFIR AL-ARABI (Aug. 22, 2024), <https://perma.cc/4TH7-RXEL>.

10. Press Release, Security Council, Security Council Extends U.N. Mission for Referendum in Western Sahara by One Year, Adopting Resolution 2756 (2024) by Vote of 12 in Favour with 2 Abstentions, U.N. Press Release SC/15882 (Oct. 31, 2024), <https://press.un.org/en/2024/sc15882.doc.htm> [<https://perma.cc/FY24-X3GY>].

11. *See id.*

12. Benin, FREEDOM HOUSE, <https://freedomhouse.org/country/benin/freedom-world/2024> [<https://perma.cc/PCM2-SGAJ>] (last visited Nov. 7, 2024).

13. *Id.*

14. *Two Men Close to Benin's President Jailed After Alleged Coup Plot*, ASSOC. PRESS (Oct. 2, 2024), <https://perma.cc/7HDD-VVBR>.

15. *Id.*

B. BURKINA FASO

1. *Civilians Exposed to Danger in Deadly Attack*

In August, up to 600 people were shot dead by al Qaeda-linked militants, JNIM, in one of the deadliest assaults in Africa in recent decades.¹⁶ The attack led to angry protests against junta leader Captain Ibrahim Traore who seized power in the second of two successive military coups in 2022.¹⁷ Rights groups criticized the government for exposing civilians to danger in the attack.¹⁸

C. CAPE VERDE

1. *President Seeks Colonial Reparations*

In June, President José Maria Neves said the rise of right-wing populism made it difficult to debate colonial reparations but asserted this should not stop governments from pursuing the issue.¹⁹ Nearly six million Africans were forcibly taken across the Atlantic over four centuries by Portuguese vessels and sold into slavery.²⁰

D. CÔTE D'IVOIRE

1. *Human Rights Review; Forced Evictions*

Côte d'Ivoire will be one of fourteen countries examined by the UN Human Rights Council's Universal Periodic Review in November after accepting most of the recommendations from its May 2019 review.²¹ Côte d'Ivoire has "steadfastly embarked" on improving its legal framework, ratifying international legal instruments including the Optional Protocol to the Convention against Torture, and the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty.²² In August, rights groups called on

16. Saskya Vandoorne, Nick Paton Walsh, & Gianluca Mezzofiore, *Massacre in Burkina Faso Left 600 Dead, Double Previous Estimates, According to French Security Assessment*, CNN (Oct. 4, 2024), <https://edition.cnn.com/2024/10/04/africa/burkina-faso-massacre-600-dead-french-intel-intl/-index.html> [https://perma.cc/HXG5-P9CG].

17. *See id.*

18. *See id.*

19. Catarina Demony, *Cape Verde President Says Government Must Discuss Colonial Reparations*, REUTERS (June 5, 2024), <https://www.reuters.com/world/africa/cape-verde-president-says-governments-must-discuss-colonial-reparations-2024-06-05/> [https://perma.cc/XSV6-UJRS].

20. *Id.*

21. National Report Submitted Pursuant to Human Rights Council Resolutions 5/1 and 16/21, Human Rights Council, Rep. of the Working Group on the Universal Periodic Review on its Forty-Seventh Session, U.N. Doc. A/HRC/WG.6/47/CIV/1 (Aug. 21, 2024).

22. *See id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

AFRICA 229

authorities to suspend evictions and guarantee the rights of tens of thousands of people evicted from Abidjan neighborhoods.²³

E. GAMBIA

1. *FGM Ban Upheld*

Hailed as a victory for women and girls by campaigners, in July, Gambia's parliament voted against the Women's (Amendment) Bill 2024 that sought to overturn a ban on female genital mutilation (FGM).²⁴ "Concerns over enforcement of the ban have deepened," however.²⁵

F. GHANA

1. *Anti-Mining Protesters Arrested*

In September, police arrested fifty-four lawful protesters against illegal mining (galamsey) on charges of unlawful assembly and breaches of the peace, holding them in violation of their right to a court appearance within forty-eight hours or appropriate food, water, and hygienic conditions.²⁶ Amnesty International condemned the protestors' treatment with thirty-two prisoners suing the state for the infractions.²⁷

2. *Court Upholds LGBT Ban; Affirmative Action Law Pending*

In July, Ghana's Supreme Court upheld the law criminalizing same-sex relations, paving the way for the Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill 2021 to be signed into law.²⁸ In August, Parliament passed the

23. *Côte d'Ivoire: Thousands of Families Still Awaiting Support Measures after Forced Evictions in Abidjan*, AMNESTY INT'L (Aug. 14, 2024), <https://www.amnesty.org/en/latest/news/2024/08/cote-divoire-thousands-of-families-still-awaiting-support-measures-after-forced-evictions-in-abidjan/> [https://perma.cc/NSK9-GUV4].

24. Sheriff Bojang Jr., *The Gambia: Parliament Upholds FGM Ban but Concerns Over Enforcement Remain*, AFR. REPORT (July 26, 2024), <https://www.theafricareport.com/355303/the-gambia-parliament-upholds-fgm-ban-but-concerns-over-enforcement-remain/> [https://perma.cc/2WXF-B9LE].

25. *See id.*

26. #StopGalamseyNow: 53 Anti-illegal Mining Protesters Arrested, MEDIA FOUND. FOR W. AFR. (October 3, 2024), <https://mfwa.org/issues-in-focus/stopgalamseynow-53-anti-illegal-mining-protesters-arrested/> [https://perma.cc/FK7X-ZDJH].

27. *Id.*

28. *Ghana: Supreme Court Upholds Colonial-Era Anti-LGBT Law*, HUM. RTS. WATCH (July 29, 2024), <https://www.hrw.org/news/2024/07/29/ghana-supreme-court-upholds-colonial-era-anti-lgbt-law> [https://perma.cc/6CC2-KYJT].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

230 THE YEAR IN REVIEW

[VOL. 59]

Affirmative Action Act 2024 (Gender Equity) pending presidential assent to become law, proposing fifty percent of public office appointments be reserved for women and seeking to address gender disparities across sectors.²⁹

G. GUINEA

1. *Ex-leader Guilty of Crimes Against Humanity*

In July, a Guinea court found former junta leader Moussa Dadis Camara and seven other military commanders guilty of crimes against humanity from a 2009 massacre.³⁰ Troops opened fire at a rally where tens of thousands had gathered to press him not to stand in presidential elections, killing 156.³¹ Camara took power in a coup after President Lansana Conté died in 2008 but fled after an assassination attempt following the massacre.³²

H. GUINEA-BISSAU

1. *President Declines Term*

In September, President Umaro Sissoco Embaló announced he would not seek a second term in November 2025 elections but did not rule out reconsidering his decision.³³ Embaló has faced two attempted coups and twice dissolved parliament but struggled to gain a majority to push through reforms including a constitutional change to revise the semi-presidential system.³⁴

I. LIBERIA

1. *Peaceful Transfer of Power*

In January, Joseph Boakai was sworn in for a six-year term as president “following his election victory over former football star George Weah.”³⁵ The country is facing

29. Press Release, Ministry of Information, Ghana, Affirmative Action Act, 2024 (Gender Equity) Passed by Parliament (Aug. 8, 2024), <https://moi.gov.gh/newsroom/2024/08/affirmative-action-act-2024-gender-equity-passed-by-parliament/> [<https://perma.cc/V7PU-ZYHE>].

30. Paul Njie, *Guinea’s Ex-Military Ruler Jailed Over Stadium Massacre*, BBC (July 31, 2024), <https://www.bbc.com/news/articles/cn4v0599d1no> [<https://perma.cc/CR5P-DSBL>].

31. *Id.*

32. *Id.*

33. Agencies, *Guinea-Bissau President Umaro Sissoco Embaló Declines Second Term Amid Political Uncertainty*, AFRICANEWS (Sept. 13, 2024), <https://www.africanews.com/2024/09/13/guinea-bissau-president-umaro-sissoco-embalo-declines-second-term-amid-political-uncertain/> [<https://perma.cc/8DK2-2LXD>].

34. *See id.*

35. *Boakai Sworn in as New Liberia President After Victory Over Weah*, AL JAZEERA (Jan. 22, 2024), <https://www.aljazeera.com/news/2024/1/22/boakai-sworn-in-as-new-liberia-president-after-victory-over-weah> [<https://perma.cc/5Z49-CY2L>].

challenges of poverty and corruption.³⁶ Military neutrality, war fatigue, and desire for reconciliation are seen as reasons for the peaceful transfer of power.³⁷

J. MAURITANIA

1. *Anti-Slavery Tribunal Passed*

In September, Mauritania's National Assembly approved a draft law to create a specialized tribunal for slavery, human trafficking, and migrant smuggling cases.³⁸ Proponents expect the tribunal to improve enforcement of Law No. 2015-031 that criminalizes slavery.³⁹

K. MALI

1. *UN, ECOWAS Withdrawals*

Raising concerns about the protection of civilians and the monitoring of abuses, the UN Mission (MINUSMA) withdrew from Mali in December 2023 at the request of the country's Russia-backed transitional military authorities.⁴⁰ In January, Mali's army and "foreign military personnel" allegedly summarily executed twenty-five people with thirty more killed in central Mali attacks.⁴¹ Mali also announced in January that it would leave ECOWAS, depriving victims of the ability to seek justice through the bloc's Community Court of Justice.⁴²

L. NIGER

1. *Digital Dissemination Law Reinforced*

In June, military regime leader, Abdourahamane Tiani, strengthened penalties related to the digital distribution of data that "disturb[s] public order."⁴³ Journalists must refrain from publishing information that could harm national unity, facing

36. See *id.*

37. See *id.*

38. *Mauritania: Creation of a Court Responsible for the Fight Against Slavery and Human Trafficking*, SAHARA MEDIA (Sept. 11, 2024), <https://fr.saharamedias.net/mauritanie-creation-dun-tribunal-charge-de-la-lutte-contre-lesclavage-et-la-traite-des-personnes/> [<https://perma.cc/XNV7-WQFL>].

39. *Id.*

40. *Mali: Army, Wagner Group Atrocities Against Civilians*, HUM. RTS. WATCH (Mar. 28, 2024) <https://www.hrw.org/news/2024/03/28/mali-army-wagner-group-atrocities-against-civilians> [<https://perma.cc/3QAS-E4XB>].

41. *UN Rights Chief Decries Death of 50 People in Mali Attacks*, AL JAZEERA (Feb. 1, 2024), <https://www.aljazeera.com/news/2024/2/1/un-rights-chief-decries-death-of-50-people-in-mali-attacks> [<https://perma.cc/H82H-VSUE>].

42. See *id.*

43. *The World with AFP, Niger Toughens Law Cracking Down on Digital Dissemination of Data "Disturbing Public Order"*, LE MONDE AFRIQUE (June 13, 2024), https://www.lemonde.fr/afrique/article/2024/06/13/le-niger-durcit-une-loi-reprimant-la-diffusion-numerique-de-donnees-troublant-lordre-public_6239405_3212.html [<https://perma.cc/9WSV-J7JE>].

penalties of “two to five years in prison and a fine of two to five million CFA francs” (USD 3,354 to 8,385).⁴⁴

M. NIGERIA

1. *Casualties and Displacement*

Armed groups continued to “cause civilian casualties and displacement in north-eastern Nigeria.”⁴⁵ The UN documented nearly 150 incidents including abductions, armed attacks, civil unrest, illegal vehicle checkpoints, and explosive devices from March to April.⁴⁶ More than 10,000 people were internally displaced; they are seeking humanitarian assistance for themselves and their families as well as improved security conditions.⁴⁷

2. *Minimum Wage Raised*

In July, the National Minimum Wage (Amendment) Act 2024 (the Act) was passed to improve workers’ living conditions and address inflation, given rising economic challenges.⁴⁸ The new Act saw a 12.9% increase in the monthly minimum wage, from 30,000 naira in 2019 (about USD 18.15) to 70,000 in 2024 (about USD 42.35).⁴⁹ The Act also shortened the minimum wage review from five to three years and set fines with compensation to be paid to affected employees.⁵⁰

N. SÃO TOMÉ AND PRÍNCIPE

1. *Reparations Sought*

In May, São Tomé and Príncipe indicated it would ask Portugal for reparations to recompense damages caused by colonialism.⁵¹ The response came after Portugal’s President, Marcelo Rebelo de Sousa, accepted that crimes had been committed

44. *Id.*

45. *Nigeria – Complex Emergency Fact Sheet #3 Fiscal Year (FY) 2024*, USAID (June 21, 2024), <https://reliefweb.int/report/nigeria/nigeria-complex-emergency-fact-sheet-3-fiscal-year-fy-2024> [<https://perma.cc/3CTZ-P2Q5>].

46. *Id.*

47. *Id.*

48. Camillus Eboh, *Nigerian Lawmakers Pass Minimum Wage Bill, Ending Labour Dispute*, REUTERS (July 23, 2024), <https://www.reuters.com/world/africa/nigerian-lawmakers-pass-minimum-wage-bill-ending-labour-dispute-2024-07-23/> [<https://perma.cc/E2U4-F8Z5>].

49. *The National Minimum Wage (Amendment) Act 2024: Key Updates and Practical Tips for Employers in Nigeria*, PAVESTONES LEGAL (Aug. 2024), <https://pavestoneslegal.com/wp-content/uploads/2024/08/The-National-Minimum-Wage-Amendment-Act-2024.pdf> [<https://perma.cc/9SVG-L28Q>].

50. *Id.*

51. Catarina Demony, *Island Nation of Sao Tome and Principe to ask Portugal for Colonial Reparations*, REUTERS (May 2, 2024), <https://www.reuters.com/world/island-nation-sao-tome-principe-ask-portugal-colonial-reparations-2024-05-02/> [<https://perma.cc/E654-76VN>].

during transatlantic slavery in the colonial era.⁵² This admission sparked national debate and criticism from right-wing parties.⁵³

O. SENEGAL

1. *Election Delay Unconstitutional*

In February, the Constitutional Court annulled both President Macky Sall's decree and a bill passed by parliament that postponed elections to December, triggering widespread protests.⁵⁴ President Sall insisted he was not planning to run again for office but critics accused him of trying to cling on to power or unfairly influencing his successor.⁵⁵ The Supreme Court ruled that the election should not be held after the term expired on April 2.⁵⁶ In March, forty-four year old former tax collector Bassirou Diomaye Faye won the elections after a meteoric rise to become Africa's youngest elected president.⁵⁷

P. SIERRA LEONE

1. *Child Marriage Prohibited*

In May, Sierra Leone passed the landmark Prohibition of Child Marriage Act 2024 making marriage to anyone under eighteen a criminal offence subject to "a term of imprisonment of not less than fifteen years."⁵⁸ The law prohibits cohabitation with a child and provides counselling and a safe home for victims.⁵⁹ It protects both genders from practices that have resulted in three in ten girls being married in childhood.⁶⁰

52. *Id.*

53. *Id.*

54. Mayeni Jones & James Gregory, *Senegal Election: Court Blocks President Macky Sall's Bid to Delay Poll*, BBC (Feb. 16, 2024), <https://www.bbc.co.uk/news/world-africa-68310131> [<https://perma.cc/9ER5-NA2R>].

55. *See id.*

56. Natasha Kuhungi, *Senegal Supreme Court Rejects Opposition Party Appeal to Overturn Date for Presidential Election*, JURISTNEWS (Mar. 16, 2024), <https://www.jurist.org/news/2024/03/senegal-supreme-court-rejects-opposition-party-appeal-to-overturn-date-for-presidential-election/> [<https://perma.cc/5SC7-KX4K>].

57. Nicolas Haque, *From Prisoner to President in 20 Days, Senegal's Diomaye Faye Takes Office*, AL JAZEERA (Apr. 2, 2024), <https://www.aljazeera.com/features/2024/4/2/from-prisoner-to-president-in-20-days-senegals-diomaye-faye-takes-office> [<https://perma.cc/TQN7-MG7J>].

58. The Prohibition of Child Marriage Act 2024, Sierra Leone Gazette Extraordinary Vol. CLXV, No. 40, at §§ 1, 2(2) (2024).

59. *Id.* §§ 11(1)-(2), 22(2).

60. *See id.*; UNITED NATIONS CHILDREN'S FUND [UNICEF], THE STATE OF THE WORLD'S CHILDREN 2023: FOR EVERY CHILD, VACCINATION 181 (2023).

Q. TOGO

1. *Constitutional Reforms Paused*

In April, parliament approved a new constitution extending the president's term in moving from a presidential to a parliamentary system, with critics denouncing the move as a coup.⁶¹ This resulted in the reforms being paused, pending further consultations.⁶² President Faure Gnassingbé's supporters argue the changes reduce his powers by transforming the presidency into a ceremonial role.⁶³ Opponents claim the reform removes time limits, enabling him to remain president until 2031, after which he could be appointed 'president of the council of ministers'—effectively prime minister—thereby continuing his family's fifty-seven-year rule.⁶⁴

III. Central Africa

A. CAMEROON

1. *Elections Delayed*

In July, President Paul Biya secured approval from lawmakers to delay parliamentary and local elections until 2026, a move opposition parties fear will make it harder for them to challenge the 2025 presidential elections.⁶⁵ The bill extends lawmakers' mandates to March, 2026, such that legislative and municipal elections will take place after the presidential poll.⁶⁶ Biya is one of Africa's longest-serving presidents, succeeding President Ahmadou Ahidjo in 1982.⁶⁷

B. CENTRAL AFRICAN REPUBLIC

1. *Arms Embargo Lifted*

In July, the UN Security Council lifted the ten-year-old arms embargo on the Central African Republic (CAR) government forces, calling on nations to help prevent the direct or indirect supply of weapons and related materiel to armed groups

61. Natasha Booty & Nicolas Negoce, *Togo Constitution: Parliament Passes Reforms Likened to Coup*, BBC (Apr. 20, 2024), <https://www.bbc.co.uk/news/world-africa-68860091> [https://perma.cc/36RP-HTCZ].

62. See *id.*

63. See *id.*

64. See *id.*

65. Amindeh Blaise Atabong, *Cameroon's President Wins Backing to Delay Legislative, Local Polls*, REUTERS (July 9, 2024, 12:30 PM CDT), <https://www.reuters.com/world/africa/cameroons-president-wins-backing-delay-legislative-local-polls-2024-07-09/> [https://perma.cc/4BJR-QZ94].

66. See *id.*

67. *Id.*

operating in the country.⁶⁸ The 2013 embargo was set during inter-communal conflict where predominantly Muslim Seleka rebels seized power leading to mostly Christian militias resisting.⁶⁹ Resolution 2745 (2024) also extended the mandate of the Panel of Experts which supports the CAR Sanctions Committee until August 2025.⁷⁰

C. CHAD

1. *Interim Military Leader Declared Winner of Presidential Elections*

In May, General Mahamat Idriss Déby won the presidential elections, legitimizing his hold on power and extending his family's thirty-four year rule.⁷¹ Déby's closest rival, Prime Minister Succes Masra, had declared victory, urging peaceful opposition to the contested results.⁷² Déby was unconstitutionally installed as leader after his father, Idriss Déby Itno, was killed in battle in 2021.⁷³ The interim government violently suppressed protests demanding a return to civilian rule.⁷⁴ A December 2023 referendum had replaced the constitution with one enabling Déby to run for president.⁷⁵

D. CONGO (DEMOCRATIC REPUBLIC)

1. *Executions Reinstated*

In March, the DRC lifted a twenty-one-year moratorium to resume carrying out executions in response to escalating violence in the country.⁷⁶ In September, a military tribunal handed down death sentences to thirty-seven people for their role in

68. Security Council Lifts Arms Embargo on Central African Republic Forces, U.N. (July 30, 2024), <https://news.un.org/en/story/2024/07/1152656> [<https://perma.cc/K78V-BTBV>].

69. . See *id.*

70. See *id.*

71. Kathryn Armstrong & Paul Njie, *Chad's Military Ruler Wins Presidential Poll*, BBC (May 10, 2024), <https://www.bbc.com/news/articles/cz96ezdljl9o> [<https://perma.cc/2JUJ-VQEV>].

72. See *id.*

73. *Id.*

74. *Chad: Political Transition Ends with Déby's Election*, HUM. RTS. WATCH (May 13, 2024, 1:30 PM EDT), <https://www.hrw.org/news/2024/05/13/chad-political-transition-ends-debys-election> [<https://perma.cc/6N4U-MVJL>].

75. *Id.*

76. Nova Kruijning, *DR Congo Reinstates Death Penalty after 21 Years Amid Escalating Violence and Militant Attacks*, JURIST NEWS (Mar. 17, 2024, 11:14:29 AM), <https://www.jurist.org/news/2024/03/dr-congo-reinstates-death-penalty-after-21-years-amid-escalating-violence-and-militant-attacks/> [<https://perma.cc/5XTM-9WPD>].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

236 THE YEAR IN REVIEW

[VOL. 59]

a failed coup.⁷⁷ But the death sentences were thereafter lifted to life imprisonment.⁷⁸

2. *New Cabinet, New Constitution*

In October, the President announced a national commission to draft a new constitution despite opposition parties expressing concern over attempts to extend presidential term limits.⁷⁹ President Felix Tshisekedi was re-elected in December 2023, the results questioned by the opposition.⁸⁰ Tshisekedi has struggled to gain legitimacy after the disputed 2018 election; he has also failed to end armed conflict in the country.⁸¹

E. CONGO (REPUBLIC)

1. *World Bank Funding, Flooding*

In December 2023, the World Bank approved a Development Policy Financing (DPF) operation of USD 80 million to support reforms in taxation and public financial management; this is the second of three 2022-2024 DPFs.⁸² In January, flooding left hundreds of thousands of people in need of humanitarian assistance, with the disaster affecting a total of 1.8 million people.⁸³

77. Emmet Livingstone, *3 Americans Sentenced to Death in Failed Coup Attempt Trial in DRC*, NPR (Sep. 13, 2024, 6:10 PM EDT), <https://www.npr.org/2024/09/13/nx-s1-5111628/3-americans-sentenced-to-death-in-failed-coup-attempt-trial-in-drc> [<https://perma.cc/AM4M-LVHK>].

78. *Congo Commutes Death Sentences for US Citizens in Failed Coup*, REUTERS (Apr. 2, 2025), <https://www.reuters.com/world/africa/congo-commutes-death-sentences-us-citizens-failed-coup-2025-04-02/> [<https://perma.cc/9TZ4-SREY>].

79. Mark Banchereau, *Congo's President Announces Plans for a New Constitution. Opposition Worried about Term Limit Change*, ASSOC. PRESS (Oct. 24, 2024, 10:12 AM CDT), <https://apnews.com/article/congo-tshisekedi-constitution-change-bffb4cc0b3c2e43ad3c1ce434ccfc4a2> [<https://perma.cc/J2DL-Q5YL>].

80. See *id.*

81. See *id.*

82. *The Republic of Congo Promotes Governance Reforms to Boost Inclusive and Sustainable Growth*, WORLD BANK GRP. (Dec. 15, 2023), <http://worldbank.org/en/news/press-release/2023/12/15/the-republic-of-congo-promotes-governance-reforms-to-boost-inclusive-and-sustainable-growth> [<https://perma.cc/PXX2-S4MM>].

83. Rédaction Africanews, *Congo Brazzaville: Thousands in Need of Assistance after Floods Wreak Havoc*, AFRICANEWS (Aug. 13, 2024, 11:04 AM), <https://www.africanews.com/2024/01/21/congo-brazzaville-thousands-in-need-of-assistance-after-floods-wreak-havoc/> [<https://perma.cc/54NK-2ZJY>].

F. EQUATORIAL GUINEA

1. *Digital Development Plan, Russian State Visit*

In June, a Digital Development Partnership Report developed with the World Bank, outlined goals to adopt digital technologies to achieve economic diversification, stimulate innovation, and create high-skilled jobs.⁸⁴ In September, President Teodoro Obiang Nguema paid a state visit to Moscow, meeting with President Vladimir Putin to promote collaboration with Russia as an oil-rich member of the Gas Exporting Countries Forum and OPEC+. ⁸⁵

G. GABON

1. *Financial Mediation Framework*

In March, a financial mediation legal framework was adopted to safeguard consumer rights.⁸⁶ Decree 0121/PR/MEP gives consumers resort to mediation to resolve disputes with credit, microfinance and payment institutions, insurance companies, and financial markets investment service providers.⁸⁷

2. *New Constitution Referendum*

In November, Gabon held a referendum on a new constitution, moving toward restoring civilian government as promised by the ruling military junta that ousted President Ali Bongo Ondimba in 2023.⁸⁸ The proposed constitution includes a seven-year presidential term renewable only once.⁸⁹

84. *Equatorial Guinea: New Report Proposes a Way Forward to Develop a Safe and Inclusive Digital Economy*, WORLD BANK GRP. (June 25, 2024), <https://www.worldbank.org/en/news/press-release/2024/06/25/equatorial-guinea-new-report-proposes-a-way-forward-to-develop-a-safe-and-inclusive-digital-economy> [https://perma.cc/D558-UUSY].

85. Dominic Wabwireh, *Equatorial Guinea's President Visits Russia for Diplomatic Talks*, AFRICANEWS (Sep. 26, 2024, 5:56 PM), <https://www.africanews.com/2024/09/26/equatorial-guineas-president-visits-russia-for-diplomatic-talks/> [https://perma.cc/7PFT-LMLU].

86. *Financial Mediation Legal Framework Adopted to Safeguard Consumer Rights*, MIRANDA ALLIANCE (May 2024), <https://www.mirandalawfirm.com/> [https://perma.cc/2599-JJPF].

87. *Id.*

88. Dominic Wabwireh, *Key Details on Gabon's New Constitution and Upcoming Referendum*, AFRICANEWS (Oct. 22, 2024, 10:53 AM), <https://www.africanews.com/2024/10/22/key-details-on-gabons-new-constitution-and-upcoming-referendum/> [https://perma.cc/D6PG-WUUY].

89. *Id.*

IV. East Africa

A. BURUNDI

1. UN Monitoring Calls

In September, rights groups called for continued UN oversight over Burundi as “grave abuses” persisted.⁹⁰ The country has blocked access to the Special Rapporteur as well as to rights groups.⁹¹ Many human rights defenders and journalists now live in exile.⁹²

B. DJIBOUTI

1. Commendation

In February, the UN Committee on the Elimination of Discrimination against Women commended Djibouti for legislative and judicial reforms addressing barriers to fulfilling the country’s Convention obligations but felt the protection of rights for women and girls remained weak.⁹³

2. Judgement Enforced

In July, the U.S. District Court for the District of Columbia granted an unopposed petition to confirm the USD 200 million partial award issued in 2022 by the London Court of International Arbitration (LCIA) against Djibouti.⁹⁴ This marks a third win in the legal battle over unlawful seizure of the Doraleh Container Terminal (DCT).⁹⁵ Built and operated by DP World, the terminal remains Djibouti’s largest source of revenue, as well as a key gateway to the 140 million-strong Horn of Africa.⁹⁶ Djibouti seized the DCT in 2018, claiming the agreement unfairly favored DP World, but the claims were dismissed by judges and arbitrators in the UK High Court and LCIA.⁹⁷

90. *Burundi: Continued UN Oversight Needed as Grave Abuses Persist*, HUM. RTS. WATCH (Sep. 23, 2024, 11:00 AM EDT), <https://www.hrw.org/news/2024/09/23/burundi-continued-un-oversight-needed-grave-abuses-persist> [<https://perma.cc/2MLW-KDSV>].

91. *Id.*

92. *Id.*

93. *Experts of the Committee on the Elimination of Discrimination against Women Commend Djibouti on Legislative and Judicial Reforms, Ask about the Impact of Military Bases on Women and about Female Genital Mutilation*, U.N. (Feb. 8, 2024), <https://www.ohchr.org/en/meeting-summaries/2024/02/experts-committee-elimination-discrimination-against-women-commend> [<https://perma.cc/7LXL-YS9J>].

94. *DP World, US Court Enforces \$200M Award against Government of Djibouti over Illegal Port*, CNBC AFR. (July 30, 2024, 3:00:42 PM GMT), <https://www.cnbcfr.com/2024/us-court-enforces-200m-award-against-government-of-djibouti-over-illegal-port-seizure/> [<https://perma.cc/NLZ5-QKK9>].

95. *Id.*

96. *See id.*

97. *See id.*

C. ERITREA

1. *Human Rights Conditions Remain Dire*

In June, the UN Human Rights Council found the situation in Eritrea remained dire with continued violations including the widespread use of arbitrary detention and enforced disappearances.⁹⁸ Authorities continue to enforce indefinite national service that amounts to forced labour and has been linked to torture and inhuman or degrading treatment.⁹⁹

D. ETHIOPIA

1. *Market Reforms; IMF Funds*

In April, Ethiopian Investment Board Directive No. 1001/2024 lifted restrictions on foreign investment across sectors with Proclamation No. 1322/2024 legislating incentives for the creation of special economic zones.¹⁰⁰ In June, the Council of Ministers approved a draft banking proclamation to allow foreign-held subsidiaries, equity investments, and branches.¹⁰¹ In July, the IMF approved a four-year USD 3.4 billion financing package to support Ethiopia's Homegrown Economic Reform Agenda.¹⁰²

2. *Immigration Restrictions; Transitional Justice Policy*

Raising concerns about abuse of power, in June, the government proposed an amendment to Immigration Proclamation No. 354/2003 to give the Immigration and Citizenship Service Director General power to prevent people from leaving the country without a court order.¹⁰³ In April, the Council of Ministers approved a transitional justice policy to address wide-ranging human rights concerns.¹⁰⁴

98. *Human Rights Situation in Eritrea Remains Dire and the Authorities Choose to Maintain Practices which Perpetuate the Crisis, Special Rapporteur Tells Human Rights Council*, U.N. (June 21, 2024), <https://www.ohchr.org/en/meeting-summaries/2024/06/human-rights-situation-eritrea-remains-dire-and-authorities-choose> [<https://perma.cc/C2KN-Z7EC>].

99. See *id.*

100. *Ethiopia: New Law Allowing Foreign Investors in Restricted Sectors*, HKTDC RSCH. (May 16, 2024), <https://research.hktdc.com/en/article/MTY5MjY3MDg3Nw> [<https://perma.cc/67GF-JRXY>].

101. *NBE Proclamation and Banking Business Proclamation*, NAT'L BANK OF ETH. (June 14, 2024), https://nbe.gov.et/wp-content/uploads/2024/06/Press-Release_Proclamation.pdf [<https://perma.cc/XG6R-286R>].

102. *IMF Executive Board Approves Four-Year US\$3.4 Billion Extended Credit Facility Arrangement for Ethiopia*, INT'L MONETARY FUND (July 29, 2024), <https://www.imf.org/en/News/Articles/2024/07/29/pr24291-ethiopia-imf-exec-board-approves-4yr-us3b-ecf-arr> [<https://perma.cc/5YYJ-4DBU>].

103. *Sisay Sahlul, Bill Empowers Immigration Service to Trace Foreign Nationals, Suspend Foreign Travels*, REPORTER ETH. (June 2024), <https://thereporterethiopia.com/40244> [<https://perma.cc/2VFB-CBAP>].

104. *Addis Abeba, Justice Ministry Completes Draft Roadmap for Transitional Justice Policy Implementation*, ADDIS STANDARD (June 10, 2024), <https://addisstandard.com/justice-ministry-completes-draft-roadmap-for-transitional-justice-policy-implementation> [<https://perma.cc/A4K8-8FTA>].

E. KENYA

1. *Controversial Finance Bill Amended, Quelling Riots*

In June, Kenya's parliament passed the Finance Bill 2024, amending tax measures from an earlier version that led to weeks of unrest in the country.¹⁰⁵ The Kenya National Commission on Human Rights reported at least sixty-one killed in protests nationwide, accusing police of using excessive force and live rounds on mostly peaceful protesters of Gen Z Kenyans organizing against the bill.¹⁰⁶ President Ruto dismissed his cabinet in July after public pressure but reappointed about half the ministers, drawing fresh outrage.¹⁰⁷

F. RWANDA

1. *President Re-elected to Fourth Term*

In July, President Paul Kagame won a fourth term with more than ninety-nine percent of the vote.¹⁰⁸ In 2015, the President oversaw constitutional amendments that shortened presidential terms from seven years to five but re-set the clock for the Rwandan leader, allowing him to rule until 2034.¹⁰⁹ Kagame is credited with rebuilding the nation after the 1994 genocide but is accused of governing in a climate of fear.¹¹⁰

G. SEYCHELLES

1. *State of Emergency*

Seychelles started 2024 recovering from a state of emergency after flooding killed three people and an explosives depot blast near the capital injured 178.¹¹¹

105. Washington Mito, *MPs Pass Finance Bill 2024 Amendments*, KENYANS (June 25, 2024), <https://www.kenyans.co.ke/news/102002-mps-pass-finance> [<https://perma.cc/B4XU-NWR2>].

106. Larry Madowo, *Kenyan Youth Call for 'Mother of All Protests' as President Swears in New Cabinet*, CNN (Aug. 8, 2024), <https://edition.cnn.com/2024/08/08/africa/kenyan-youth-protests-intl/index.html> [<https://perma.cc/EMX7-D8AZ>].

107. *See id.*

108. Joseph Winter, *Rwandan President Sworn in after 99% Election Win*, BBC (Aug. 11, 2024), <https://www.bbc.com/news/articles/cd05erlzxy3o> [<https://perma.cc/Q9UJ-HMLG>].

109. Tracy McVeigh, *Rwanda Votes to Give President Paul Kagame Right to Rule until 2034*, GUARDIAN (Dec. 20, 2015), <https://www.theguardian.com/world/2015/dec/20/rwanda-vote-gives-president-paul-kagame-extended-powers> [<https://perma.cc/SJL2-KQUA>].

110. *See id.*

111. Emilie Chetty, *Seychelles Declares an Emergency after Deadly Flooding and a Blast at an Explosives Depot*, ASSOC. PRESS (Dec. 8, 2024), <https://apnews.com/article/seychelles-blast-explosives-state-of-emergency-79d4361fe9ab817c1ffe1ba19fa15373> [<https://perma.cc/53NT-QQKT>].

2. *High-Profile Anti-Corruption Case*

The July 2023 trial of former presidential adviser Mukesh Valabhji and four others for illegal possession of firearms and conspiracy to commit terrorism continued after authorities searched Valabhji's home in November 2021 and arrested him and his wife for an allegedly-missing USD 50 million foreign aid donation from the UAE.¹¹² The Valabhjis petitioned the UN Working Group on Arbitrary Detention, alleging Seychelles was depriving their right to liberty and a fair hearing, subjecting them to abusive and degrading treatment, all in violation of international and Seychelles law.¹¹³

H. SOMALIA

1. *EAC Accession*

In March, Somalia became the East African Community's eighth accession after first seeking membership in 2012.¹¹⁴ The country's high trade deficit raises concerns about its ability to adhere to EAC Customs Union and Common Market protocols.¹¹⁵ Additionally, the prospect of Somalia-based Al-Shabab leveraging the free movement principle to spread throughout the region raises a security concern.¹¹⁶

I. SOUTH SUDAN

1. *Elections Postponed; New Security Act*

In September, South Sudan postponed long-delayed general elections to December 2026, extending a transition that started in February 2020 after President Salva Kiir and his rival-turned-deputy, Riek Machar, signed a peace agreement in 2018,

112. *Seychelles: Rights Concerns in High-Profile Case*, HUM. RTS. WATCH (Mar. 21, 2024), <https://www.hrw.org/news/2024/03/21/seychelles-rights-concerns-high-profile-case> [<https://perma.cc/PK8Y-D54L>].

113. See *id.*

114. *Somalia to Deposit Her Instrument on Ratification on the Treaty of Accession to the EAC Today*, EAC (Mar. 4, 2024), <https://www.eac.int/press-releases/3046-somalia-to-deposit-her-instrument-of-ratification-on-the-treaty-of-accession-to-the-eac-today> [<https://perma.cc/83AJ-UK72>].

115. *Protocol on the Establishment of the East African Customs Union*, Arts 6, 7-12 and 10-13; *Abdighani Harad, Somalia's Membership to East African Community (EAC): Gradual Approach is Best After Institutional Reforms*, EURASIA REV. (June 3, 2023), <https://www.eurasiareview.com/03062023-somalias-membership-to-east-african-community-eac-gradual-approach-is-best-after-institutional-reforms-analysis> [<https://perma.cc/9FGV-8R9U>].

116. See *id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

242 THE YEAR IN REVIEW

[VOL. 59]

ending a five-year civil war.¹¹⁷ A new security act that allows for warrantless detentions became law in August, despite concerns from rights groups.¹¹⁸ The UN estimates that nine million people—seventy-three percent of the country’s population—need humanitarian assistance.¹¹⁹

J. SUDAN (REPUBLIC)

1. *War Perpetuates Displacement*

As of June, war in Sudan had claimed more than 15,000 lives, causing one of the world’s largest displacement crises with about nine million people forced to flee their homes.¹²⁰ Moreover, warnings of genocide have resurfaced in Darfur, where residents say they have been ethnically targeted.¹²¹ A joint military-civilian government was established following the 2019 ousting of President Omar al-Bashir but it was overthrown in another coup in 2021, when General Abdel Fattah al-Burhan, head of the armed forces and effectively the current president, took over as head of a council of generals with his deputy, General Mohamed Hamdan Dagalo, leader of the Rapid Support Forces (RSF).¹²² The RSF has origins in the Janjaweed militia, which was previously accused of ethnic cleansing in Darfur.¹²³ A framework deal to give power back to civilians was agreed to in December 2022 but talks to finalize details failed.¹²⁴ With plans to include the 100,000-strong RSF into the army a sticking point between the two generals, shooting began in April 2023 after RSF members were deployed around the country in a move the army saw as a threat.¹²⁵

K. TANZANIA

1. *Arbitrary Detentions; High Profile Case*

In August, Amnesty International called for Tanzanian authorities to halt mass arrests and arbitrary detentions of government critics after police detained figures from Tanzania’s Party for Democracy and Progress (Chadema) and journalists for

117. *South Sudan Postpones December Elections by Two Years*, AL JAZEERA (Sept. 14, 2024), <https://www.aljazeera.com/news/2024/9/14/south-sudan-postpones-december-election-by-two-years> [<https://perma.cc/H69A-MKV3>].

118. Deng Machol, *South Sudan’s Security Bill Allowing Warrantless Arrests Becomes Law*, AP (Aug. 15, 2024), <https://apnews.com/article/south-sudan-security-bill-detentions> [<https://perma.cc/2JGH-VWXE>].

119. See *Controversial National Security Bill Becomes Law by Default*, GLOB. STATE OF DEMOCRACY INITIATIVE (Aug. 2024), <https://www.idea.int/democracytracker/report/south-sudan/august-2024> [<https://perma.cc/F2D5-VQFZ>].

120. Beverly Ochieng, Wedaeli Chibelushi, *Sudan War: A Simple Guide to What is Happening*, BBC (June 13, 2024), <https://www.bbc.co.uk/news/world-africa-59035053> [<https://perma.cc/M7WA-V2XJ>].

121. *Id.*

122. See *id.*

123. See *id.*

124. See *id.*

125. See *id.*

violating a ban on holding a youth conference.¹²⁶ The Tanganyika Law Society said police also arrested 107 Chadema party members the same day.¹²⁷ In September, lawyers for Edgar Edson Mwakabela demanded authorities pay their client five billion Tanzanian shillings (USD 1.85 million) for personal injuries, inhuman and degrading treatment.¹²⁸ Mwakabela was reportedly unlawfully arrested on June 23 in Dar es Salaam and tortured at two police stations before being abandoned at the Katavi National Park four days later.¹²⁹

L. UGANDA

1. *Anti-Homosexuality Act Upheld*

In April, the Constitutional Court struck provisions of the 2023 Anti-Homosexuality Act that restricted healthcare access and criminalized renting to LGBT individuals but retained most provisions including the death penalty for “aggravated homosexuality.”¹³⁰ The ruling disregarded petitions that the law violated fundamental rights against a backdrop of increased violence and discrimination against LGBT people in Uganda.¹³¹

2. *Free Movement Protocol Signed*

In May, addressing migration issues, Uganda became the fifth country to sign the Intergovernmental Authority on Development (IGAD)’s 2020 Protocol on Free Movement of Persons.¹³²

126. *Tanzania: End Mass Arrests and Arbitrary Detentions of Political Opposition*, AMNESTY INT’L (Aug. 12, 2024), <https://www.amnesty.org/en/latest/news/2024/08/tanzania-end-mass-arrests-and-arbitrary-detentions-of-political-opposition> [https://perma.cc/RVX4-UKVD].

127. *Id.*

128. The Chanzo Reporter, *Lawyers for Torture Victim Edgar Mwakabela Seek Sh5b in Damages from Tanzanian Authorities*, CHANZO INITIATIVE (Sept. 21, 2024), <https://thechanzo.com/2024/09/21/lawyers-for-torture-victim-edgar-mwakabela-seek-sh5b-in-damages-from-tanzanian-authorities/> [https://perma.cc/G2RC-G5AK].

129. *Id.*

130. *Uganda: Court Upholds Anti-Homosexuality Act*, HUM. RTS. WATCH (Apr. 4, 2024), <https://www.hrw.org/news/2024/04/04/uganda-court-upholds-anti-homosexuality-act> [https://perma.cc/4JD4-MCTP].

131. *Id.*

132. *Uganda Signs the IGAD Free Movement of Persons Protocol*, INT’L AUTHORITY ON DEV. (May 14, 2024), <https://igad.int/uganda-ratifies-the-igad-free-movement-of-persons-protocol/> [https://perma.cc/U7LR-45WR].

V. Southern Africa

A. ANGOLA

1. Convention Ratified

In February, Angola ratified the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention).¹³³ Adherents agree to recognize and enforce arbitral awards made in other signatory states.¹³⁴

2. New Laws Threaten Freedoms

In September, President João Lorenço signed legislation into law that opponents say threaten Angolans' freedom of expression, association, and assembly.¹³⁵ The Crimes of Vandalism of Public Goods and Services Law makes non-violent protesters criminally liable if fellow protestors vandalize property or cause service disruptions, while the National Security Law extends government control over media, civil society organizations, and other private institutions under the auspices of preventing money laundering and other financial crimes.¹³⁶

B. COMOROS

1. President Re-elected to Controversial Fourth Term

In January, President Azali Assoumani was re-elected to a fourth term with sixty-three percent of the vote.¹³⁷ The election was boycotted by the opposition and denounced as 'fraudulent' but was upheld by international observers as largely free and fair.¹³⁸ Assoumani came to power in a 1999 coup and won his first election in 2002, exiting politics in 2006 before winning the presidency in 2016.¹³⁹ He was able to seek a new term after a 2018 referendum removed presidential term limits leading to widespread protests.¹⁴⁰

133. *Accession to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, MIRANDA ALL. (Jan. 2024), <https://www.mirandalawfirm.com/> [https://perma.cc/L2WP-LQND].

134. *See id.*

135. *Angola: President Signs Laws Curtailing Speech, Association*, HUM. RTS. WATCH (Sept. 10, 2024), <https://www.hrw.org/news/2024/09/10/angola-president-signs-laws-curtailling-speech-association> [https://perma.cc/9A7E-K8C2].

136. *Id.*

137. Gloria Aradi, *Comoros President Azali Assoumani Wins Fourth Term in Disputed Poll*, BBC (Jan. 17, 2024), <https://www.bbc.com/news/world-africa-68002934> [https://perma.cc/3N6Y-B4BS].

138. *Id.*

139. *Id.*

140. *Id.*

C. BOTSWANA

1. *Executive Powers Bill Fails*

In September, opposition members of Parliament boycotted a bill that would have given the President sweeping powers to appoint civil servants to key positions, as remaining members of the ruling party failed to raise enough votes to pass the measure.¹⁴¹ The proposed law was rejected a day before Parliament was dissolved ahead of general elections that saw President Mokgweetsi Masisi concede defeat, ending nearly six decades in power.¹⁴²

D. LESOTHO

1. *Labor Laws Consolidated*

Repealing the Labour Code Order 1992, April's Labour Act 2024 consolidated labor and employment laws, extending maternity leave to fourteen weeks and introducing paternity leave.¹⁴³ The Act establishes key institutions including the National Advisory Committee on Labour; the Wages and Conditions of Employment Advisory Board; the Industrial Relations Council; and Labour and Labour Appeal Courts.¹⁴⁴

E. MADAGASCAR

1. *MP Arbitrarily Detained*

In May, rights groups called for the release of Marie Jeanne d'Arc Masy Goulamaly, a Member of Parliament being arbitrarily held after filing an official complaint about the legislative elections.¹⁴⁵ Filmed by voters, election irregularities included denying entry to polling stations for three of four legislative candidates,

141. Mqondisi Dube, *Botswanan Police, Protesters Clash over Executive Powers Bill*, VOICE OF AMERICA (Sept. 5, 2024), <https://www.voanews.com/a/botswanan-police-protesters-clash-over-executive-powers-bill/7772757.html> [https://perma.cc/U5EC-3YZS].

142. Reuters, *Botswana's Ruling Party Loses Election, Ending 58-Year Rule*, CNN (Nov. 1, 2024), <https://edition.cnn.com/2024/11/01/africa/botswana-party-loses-election-masisi-boko-intl/index.html> [https://perma.cc/M7MA-92XC].

143. *Lesotho's Updated Labour Act – Promoting Fair Labour Practices and Equitable Employment Relations in Line with Global Standards*, ENSAFRICA (May 28, 2024), <https://www.ensaf-rica.com/news/detail/8648/lesothos-updated-labour-act-promoting-fair-la> [https://perma.cc/4ZBC-TE27].

144. *Id.*

145. See *Madagascar: Authorities Must Immediately Release Member of Parliament Arbitrarily Arrested after Denouncing Voting Irregularities*, AMNESTY INT'L (June 7, 2024), <https://www.amnesty.org/en/latest/news/2024/06/madagascar-authorities-must-free-mp/> [https://perma.cc/RWV9-TAV2].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

246 THE YEAR IN REVIEW

[VOL. 59]

registering minors, and threats and intimidation.¹⁴⁶ Protests broke out after Goulamaly's complaint.¹⁴⁷

F. MALAWI

1. *Anti-Homosexuality Laws Upheld*

Sitting as a constitutional court, in June, the High Court dismissed a challenge to provisions of the penal code criminalizing “unnatural sexual acts” (Section 153) or “any act of gross indecency with another person of the same sex” (Section 156).¹⁴⁸ The Court upheld the provisions as constitutional.¹⁴⁹

2. *National ID Requirement Upheld*

In October, the High Court dismissed an application by the opposition Democratic Progressive Party to overturn as unconstitutional, laws requiring a national identity card to register for upcoming elections.¹⁵⁰ The Court held the National Registration Bureau needed to ensure those eligible were able to register; opposition parties contended the Bureau was limiting registrants to support the ruling Malawi Congress Party.¹⁵¹

G. MAURITIUS

1. *Chagos Islands Revert*

After a fifty-year dispute, the UK and Mauritius announced in October that sovereignty of the Chagos Islands would revert to Mauritius in exchange for guarantees that a U.S. military base could continue operating there for ninety-nine years.¹⁵² The move should permit Chagossians, exiled from the islands in the 1960s and 1970s, to return to their ancestral archipelago.¹⁵³

146. *Id.*

147. *Id.*

148. Isaac Salima, *Court Dismisses Gay Laws Case*, TIMES GRP. MALAWI (June 29, 2024), <https://times.mw/court-dismisses-gay-laws-case/> [https://perma.cc/JED5-UHDK].

149. *See id.*

150. Pemphero Malimba, *Opposition Bitter as Registration Starts*, TIMES GRP. MALAWI (Oct. 21, 2024), <https://times.mw/opposition-bitter-as-registration-starts/> [https://perma.cc/2KGW-FSZS].

151. *Id.*

152. Shola Lawal, *Why is the UK Handing the Chagos Islands Back to Mauritius?*, AL JAZEERA (Oct. 4, 2024), <https://www.aljazeera.com/news/2024/10/4/why-is-the-uk-handing-the-chagos-islands-back-to-mauritius> [https://perma.cc/NWW4-93WJ].

153. *See id.*

H. MOZAMBIQUE

1. *Protests Following Frelimo Win*

In November, Mozambique's defense minister warned of military deployment to end unrest, denouncing police violence after election results gave victory to the ruling party Frelimo, extending its forty-nine-year hold on power.¹⁵⁴ The Opposition party, Podemos, appealed the results, alleging the vote was rigged, contending that EU election observers were prevented from monitoring counting in some areas and alleging an "unjustified alteration" of results at some polling stations.¹⁵⁵

I. NAMIBIA

1. *High Court Decriminalizes Same-Sex Relations*

In June, the High Court struck penal code sections criminalizing same-sex conduct, holding they violated constitutional rights to equality before the law (Article 10) and dignity (Article 8).¹⁵⁶ The Supreme Court had recognized same-sex unions contracted abroad in 2023, stirring debate about LGBT rights with the parliament passing bills (as yet unsigned into law) to ban marriage equality and criminalize the support of same-sex unions.¹⁵⁷

J. SOUTH AFRICA

1. *ANC Loses Majority; First Female Chief Justice*

The African National Congress lost its majority in May elections after dominating South African politics since post-apartheid elections thirty years ago, forcing it into a coalition government.¹⁵⁸ The unity government fell out in September when President Cyril Ramaphosa signed the BELA Bill into law, amending sections of the South African Schools Act of 1996 (SASA) and the Employment of Educators

154. Rédaction, *Mozambique's President Urges an End to Deadly Protests against Recent Election Results*, AFRICANEWS (Nov. 5, 2024), <https://www.africanews.com/2024/11/05/mozambiques-president-urges-an-end-to-deadly-protests-against-recent-election-results/> [https://perma.cc/C66B-JMSS].

155. See Sipiwe Sibeko, *Mozambique Ruling Party Declared Winner of Election Amid Fraud Claims*, ALJAZEERA (Oct. 24, 2024), <https://www.aljazeera.com/news/2024/10/24/mozambique-ruling-party-declared-winner-of-election-amid-fraud-claims> [https://perma.cc/QS34-HAMR].

156. Larissa Kojoué, *Namibia Court Decriminalizes Consensual Same-Sex Conduct*, HUM. RTS. WATCH (June 25, 2024), <https://www.hrw.org/news/2024/06/25/namibia-court-decriminalizes-consensual-same-sex-conduct> [https://perma.cc/9HNA-VN7X].

157. *Id.*

158. See Gerald Imary & Mogomotsi Magome, *The ANC Party that Freed South Africa from Apartheid Loses its 30-year Majority in Landmark Election*, ASSOC. PRESS (June 1, 2024), <https://apnews.com/article/south-africa-election-vote-anc-d9da7582ca98a4e00fec2da6a5fe1e91> [https://perma.cc/VDH9-DKFN].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

248 THE YEAR IN REVIEW

[VOL. 59]

Act 1998 (EEA) with opponents concerned the Bill would erode the Afrikaans language.¹⁵⁹ In July, the President appointed Deputy Chief Justice Mandisa Maya as the country's first female Chief Justice.¹⁶⁰

K. SWAZILAND (ESWATINI)

1. *eSwatini "Not Free"*

Three years after eSwatini's crackdown on pro-democracy protests and more than 500 days since human rights lawyer Thulani Maseko was killed, the country received a score of 17/100 in Freedom House's Freedom in the World 2024 report, concluding that eSwatini was 'not free.'¹⁶¹ The country's score has been low for years, with its government resisting calls for reform.¹⁶²

L. ZAMBIA

1. *High Rank in Democracy Report*

In March, the Varieties Democracy Institute (V-Dem) 2024 Democracy Report ranked Zambia the third most democratic country among nine nations grappling with autocratic rule.¹⁶³ The report highlighted Zambia's progress in halting the encroachment of autocratic governance, its struggle exacerbated by the 2014 election of Patriotic Front President Elgar Lungu.¹⁶⁴ Lungu's tenure was marred by restrictions on fundamental freedoms, including those of expression, media, and assembly.¹⁶⁵

159. Nellie Peyton, *South Africa's Leader Defends Unity Government after Dispute Over New Law*, REUTERS (Sept. 13, 2024), <https://www.reuters.com/world/africa/south-africas-president-signs-contentious-education-bill-testing-coalition-2024-09-13/> [<https://perma.cc/S7SA-KRHB>].

160. *President Ramaphosa Appoints Justice Mandisa Maya as Chief Justice*, PRESIDENCY OF S. AFR. (July 25, 2024), <https://www.thepresidency.gov.za/president-ramaphosa-appoints-justice-mandisa-maya-chief-justice> [<https://perma.cc/4NEA-ASFV>].

161. Nomathamsanqa Masiko-Mpaka, *United to Fight for Human Rights in eSwatini*, HUM. RTS. WATCH (Aug. 7, 2024), <https://www.hrw.org/news/2024/08/07/unite-fight-human-rights-eswatini> [<https://perma.cc/MUS4-GLEC>].

162. *See id.*

163. Chief Editor, *Zambia Ranks Third in 2024 Democracy Report, Marks Return to Liberal Democracy*, LUSAKA TIMES (Mar. 10, 2024), <https://www.lusakatimes.com/2024/03/10/zambia-ranks-third-in-2024-democracy-report-marks-return-to-liberal-democracy/> [<https://perma.cc/WL97-SFS3>].

164. *See id.*

165. *Id.*

M. ZIMBABWE

1. *New Sanctions*

In March, the United States imposed new sanctions on President Emmerson Mnangagwa for corruption and human rights abuses, overhauling existing sanctions.¹⁶⁶ The United States first imposed economic and travel sanctions on Zimbabwe in the early 2000s, targeting then-President Robert Mugabe and other officials.¹⁶⁷ Sworn in for a second term last year, Mnangagwa has blamed sanctions for crippling development in the country.¹⁶⁸

VI. African Institutions

A. AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

1. *Framework Agreement Signed*

In September, the Court signed a landmark Framework Agreement with the Pan-African Parliament, improving collaboration between the AU's judicial and legislative branches in protecting human rights across the continent.¹⁶⁹

B. AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

1. *Ordinary Sessions*

Meeting in Ordinary Session three times in 2024, the Commission considered deteriorating security situations; migration and forced displacement; and food and health crises with protracted conflicts in Sudan, Somalia, DRC, Ethiopia, the Sahel, Cameroon, Gabon, Niger, Mali, Burkina Faso, and Guinea.¹⁷⁰

166. Kathryn Armstrong, *Zimbabwe: US Slaps Fresh Sanctions on President Mnangagwa and Other Leaders*, BBC (Mar. 5, 2024), <https://www.bbc.co.uk/news/world-africa-68475474> [<https://perma.cc/8ZDW-UV27>].

167. *See id.*

168. *Id.*

169. *Championing the AU's Human Rights Agenda: Pan-African Parliament and African Court Forge Formal Collaboration Framework*, PAN-AFRICAN PARLIAMENT (Sept. 5, 2024), <https://pap.au.int/en/news/press-releases/2024-09-05/championing-african-human-rights-agenda-pan-african-parliament-and> [<https://perma.cc/3Y4K-59J6>].

170. *See generally Resolution on the Human Rights Situation in the Republic of Sudan*, AFRICAN COMM'N ON HUM. & PEOPLES' RTS., Res. 588 (LXXIX) (June 10, 2024), <https://achpr.a-u.int/en/adopted-resolutions/human-rights-situation-republic-sudan-achprres588lxxix-2024> [<https://perma.cc/UY9Q-RYEQ>].

C. AFRICAN UNION

1. *Summit Addresses Education, Right to Nationality*

Held February 17-18, the AU's Thirty-Seventh Ordinary Session addressed education challenges, adopting an objective to "enhance and protect" equitable access to education to counter obstacles faced by girls, children from poor backgrounds, those with disabilities, and the forcibly displaced.¹⁷¹ The Union also adopted a Protocol on the Right to Nationality at the Session, filling a gap in the African Charter.¹⁷²

2. *Disability Rights Protocol*

In June, the Protocol to the African Charter on the Rights of Persons with Disabilities entered into force when the Republic of the Congo became the fifteenth ratification.¹⁷³ The Protocol was adopted in 2018 to "promote, protect and ensure the full and equal enjoyment of all human and people's rights by all persons with disabilities, and to ensure respect for their inherent dignity."¹⁷⁴

D. ECONOMIC COMMUNITY OF WEST AFRICAN STATES

1. *Three West African States Withdraw*

In January, Burkina Faso, Mali, and Niger announced their intentions to withdraw from ECOWAS, underscoring the bloc's failure to counter unconstitutional changes of power in recent years; this action weakens the bloc.¹⁷⁵ In October, the

171. 37th AU SUMMIT: *African Union Takes Steps to Address Education Challenges in Africa*, AFRICAN UNION (Feb. 18, 2024), <https://au.int/en/pressreleases/20240218/37th-au-summit-african-union-takes-steps-address-education-challenges-africa> [https://perma.cc/B8Y2-ATH3].

172. Bronwen Manby, *A New Treaty on Statelessness and the Right to a Nationality in Africa*, GLOB. CITIZENSHIP OBSERVATORY (GLOBALCIT) (Mar. 6, 2024), <https://globalcit.eu/a-new-treaty-on-statelessness-and-the-right-to-a-nationality-in-africa/> [https://perma.cc/E98R-E647].

173. *Entry into Force of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa*, AFR. COMM'N ON HUM. AND PEOPLES' RTS. (June 9, 2024), <https://achpr.au.int/fr/news/communiqué-de-presse/2024-06-09/lentree-en-vigueur-du-protocole-la-charte> [https://perma.cc/9PJL-TZHF].

174. *Ratifications of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa*, AFR. DISABILITY F. (June 26, 2024), <https://africandisabilityforum.org/press-release-ratifications-of-the-protocol-to-the-african-charter-on-human-and-peoples-rights-on-the-rights-of-persons-with-disabilities-in-africa/> [https://perma.cc/DEG9-3W32].

175. *The Withdrawal of Three West African States from ECOWAS*, INT'L INST. FOR STRATEGIC STUD. (June 11, 2024), <https://www.iiss.org/publications/strategic-comments/2024/06/the-withdrawal-of-three-west-african-states-from-ecowas/> [https://perma.cc/SV3L-8P5S].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

AFRICA 251

ECOWAS Regional Competition Authority's Council was sworn in, its inauguration completing full operationalization of the statutory organs necessary to its function.¹⁷⁶

E. EAST AFRICAN COMMUNITY

1. Education

In an inaugural EAC Education Conference in August, Tanzanian Vice President Philip Mpango called for regional efforts to transform the sector for the digital age.¹⁷⁷ Mpango acknowledged challenges with increasing teacher capacity, funding, and embracing digitization as "essential."¹⁷⁸

F. AFRICAN DEVELOPMENT BANK

1. SDG Meeting

In September, AfDB President Akinwumi Adesina met with UN Secretary General Antonio Guterres and multilateral development bank (MDB) heads to explore MDB reform and greater collaboration in achieving the sustainable development goals.¹⁷⁹

G. AFRICAN EXPORT-IMPORT BANK

1. WTO Forum

In September, Afreximbank's Pan-African Private Sector Trade and Committee (PARTFAC) led a panel on the African Continental Free Trade Area (AfCFTA) at a World Trade Organization Forum.¹⁸⁰ Panelists discussed the need for awareness

176. *Swearing-in of the Members of the Council of the ECOWAS Regional Competition Authority (ERCA)*, ECOWAS REG'L COMPETITION AUTH. (Oct. 8, 2024), <https://erca-arcc.org/swearing-in-of-the-members-of-the-council-of-the-ecowas-regional-competition-authority-erca/> [<https://perma.cc/RG2R-PEXP>].

177. *Inaugural EAC Education Conference Calls for Joint Regional Efforts to Transform the Sector in the Digital Age*, E. AFRICAN CMTY. (Aug. 13, 2024), <https://www.eac.int/press-releases/138-education-science-technology-news/3151-inaugural-eac-education-conference-calls-for-joint-regional-efforts-to-transform-the-sector-in-the-digital-age> [<https://perma.cc/XP9Z-8UJX>].

178. See *id.*

179. *UN Secretary-General and Heads of Multilateral Development Banks to Enhance Collaboration to Address the Challenges of Achieving the SDGs*, AFR. DEV. BANK GRP. (June 25, 2024), <https://www.afdb.org/en/news-and-events/press-releases/un-secretary-general-and-heads-multilateral-development-banks-enhance-collaboration-address-challenges-achieving-sdgs-74333> [<https://perma.cc/D5AU-LFF5>].

180. *PAFTRAC Urges Increased Efforts to Raise Awareness of AfCFTA's Operational Mechanisms*, AFREXIM BANK (Sep. 25, 2024), <https://www.afreximbank.com/paftrac-urges-increased-efforts-to-raise-awareness-of-afctas-operational-mechanisms/> [<https://perma.cc/ZV44-PQ4C>].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

252 THE YEAR IN REVIEW

[VOL. 59]

campaigns and infrastructure development and proposed a digital AfCFTA Business Ready Certification to leverage the Treaty's mechanisms.¹⁸¹

H. UN ECONOMIC COMMISSION FOR AFRICA

1. *Reform Calls*

Launched in April, the Commission's 2024 Economic Report on Africa called for holistic development plans to fundamentally redirect African production, governance, technology, human capital, and financial systems.¹⁸² ECA Executive Secretary Claver Gatete called for reform of the international financial architecture in addressing Africa's debt challenges.¹⁸³

I. SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

1. *Legal Identity*

In June, the International Organization for Migration, along with SADC and other partners, held a second conference on legal identity, addressing challenges for undocumented migrants in the region.¹⁸⁴ Documents are critical to establishing legal identity and their lack can pose great challenges to displaced persons.¹⁸⁵

J. COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA

1. *'Game-Changer' Clean Energy Launch*

In January, COMESA and the World Bank announced a USD 50 million platform to support the bloc with sustainable energy access investments.¹⁸⁶ The Accelerating Sustainable and Clean Energy Access Transformation (ASCENT) initiative is part of a USD 5 billion World Bank program to open clean energy access with life-transforming opportunities for 100 million people across twenty countries in

181. See *id.*

182. *Economic Report on Africa 2024: Investing in a Just and Sustainable Transition in Africa*, U.N. ECON. COMM'N FOR AFR. (Apr. 2024), <https://www.uneca.org/stories/economic-report-on-africa-2024-investing-in-a-just-and-sustainable-transition-in-africa> [<https://perma.cc/7LCE-9V59>].

183. *Claver Gatete Calls for Reform of the Global Financial System to Address Africa's Financing Challenges*, AFR. NEWS CHANNEL (July 24, 2024), <https://www.africanewschannel.org/featured/claver-gatete-calls-for-reform-of-the-global-financial-system-to-address-africas-financing-challenges> [<https://perma.cc/5DU8-8TH5>].

184. *Bridging Gaps with Legal Identity Access in the SADC Region*, INT'L ORG. FOR MIGRATION (June 12, 2024), <https://mozambique.iom.int/news/bridging-gaps-legal-identity-access-sadc-region> [<https://perma.cc/734D-VWU4>].

185. See *id.*

186. *COMESA and the World Bank Launch \$50 Million Regional Platform to Overcome Hurdles to Accelerating Energy Access in Eastern and Southern Africa*, WORLD BANK (Jan. 31, 2024), <https://www.worldbank.org/en/news/press-release/2024/01/31/comesa-and-the-world-bank-afe-launch-50-million-regional-platform-to-overcome-hurdles-to-accelerating-energy-access> [<https://perma.cc/D76N-48E4>].

Eastern and Southern Africa, where only forty-eight percent of the population has electricity.¹⁸⁷

K. INTERGOVERNMENTAL AUTHORITY ON DEVELOPMENT

1. *New Framework Ratified; Food Security Strategy*

Adopted in June 2023, three member states (Djibouti, Ethiopia, and South Sudan) ratified a new IGAD framework to increase collaboration between member states and the global community.¹⁸⁸ In October, with pressing food security challenges across the region, IGAD validated the World Bank-funded Food and Nutrition Security Strategy (2025-2034) as part of its Food Systems Resilience Program that addresses climate-driven food security challenges like droughts and floods.¹⁸⁹

L. ECONOMIC COMMUNITY OF CENTRAL AFRICAN STATES

1. *Security Issues Summit*

Security issues across the eleven-member bloc's region were central to an August summit of heads of state and government, along with the conflict between the DRC and rebel group M23.¹⁹⁰ Representatives at the summit also spoke out against the arms embargo on the Central African Republic.¹⁹¹ ECCAS is fighting to stay afloat financially with projections that it will need USD 23–28.5 million to continue.¹⁹²

M. UN MECHANISM FOR INTERNATIONAL CRIMINAL TRIBUNALS

1. *Tribunals Closer to Completion*

Judge Graciela Gotti Santana, President of the UN Mechanism for International Criminal Tribunals (the Mechanism), briefed ambassadors in June that all 253 defendants indicted by UN tribunals in Rwanda and the former Yugoslavia have been accounted for as the Mechanism moves closer toward closing.¹⁹³ The Mechanism

187. See *id.*

188. *Three IGAD Member States Ratify the New IGAD Treaty, Marking a Milestone in Regional Cooperation*, INTERGOVERNMENTAL AUTH. ON DEV. (Sept. 15, 2024), <https://igad.int/three-igad-member-states-ratify-the-new-igad-treaty-marking-a-milestone-in-regional-cooperation/> [<https://perma.cc/4BRL-TJS2>].

189. *IGAD Regional Experts Validate the Food and Nutrition Security Strategy (2025-2034)*, INTERGOVERNMENTAL AUTH. ON DEV. (Oct. 26, 2024), <https://igad.int/igad-regional-experts-validate-the-food-and-nutrition-security-strategy-2025-2034/> [<https://perma.cc/X2UR-XM4Y>].

190. Afolake Oyinloye, *Kinshasa Hosts Central African Economic Bloc Leaders*, AFRICANEWS (July 26, 2022), <https://www.africanews.com/2022/07/26/kinshasa-hosts-central-african-economic-bloc-leaders/> [<https://perma.cc/W4EY-SG5S>].

191. See *id.*

192. *ECCAS in Need of CFA 15bn*, AFR. INTEL. (Nov. 4, 2024), <https://www.africaintelligence.com/central-africa/2024/11/04/eccas-in-need-of-cfa-15bn,110334915-bre> [<https://perma.cc/3BGC-QL38>].

193. *UN Chief Urges Global Action to End AIDS by 2030*, U.N. NEWS (June 1, 2024), <https://news.un.org/en/story/2024/06/1150931> [<https://perma.cc/8G8F-94XS>].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

254 THE YEAR IN REVIEW

[VOL. 59]

was established by the Council to continue essential functions of the UN International Criminal Tribunal for Rwanda (UNICTR), which closed in December 2015, and for the former Yugoslavia (UNICTY), which concluded two years later.¹⁹⁴

194. *Id.*

EURASIA

MAXIM DOGONKIN AND KIMBERLY REED*

This Article discusses significant legal developments in the Eurasian region during 2024.

UZBEKISTAN

The former Soviet Republic of Uzbekistan is located in the heart of Central Asia.¹ With a population of around thirty-three million people, it enjoys abundant natural resources and has a sizable potential for development.² For several years, the Government of Uzbekistan has been focused on enacting “comprehensive economic and social reforms aimed at boosting growth, expanding international relations, and creating favorable legal conditions for foreign direct investments (FDI).”³ A 2023 Presidential decree stated that these large-scale actions have been implemented in order to rapidly develop all sectors of the economy, increase investment attractiveness (especially for foreign investors), create favorable conditions for increasing employment, expand the production and service sectors, and improve the living standards of the population.⁴ These ongoing efforts have focused primarily on improving the business and legal environments, including major reforms to protect investor interests.⁵ As a result, FDI in Uzbekistan has exceeded USD 900 million per quarter since 2023.⁶

In 2024, extensive efforts to stimulate FDI in Uzbekistan continued, with new laws enacted regarding privatization; representative offices; public-private

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1. U.S. Dep’t of State, Bureau of South and Central Asian Affairs, Background Note: Uzbekistan (2008).

2. *Boosting Foreign Investment in Uzbekistan*, USAID (June 22, 2020), <https://2017-2020.usaid.gov/uzbekistan/program-updates/jun-2020-boosting-foreign-investment-uzbekistan> [<https://perma.cc/TD5V-75SY>].

3. *Id.*

4. Decree of the President No. UP-166 (2023) (Uzb.) [hereinafter Resolution 166].

5. Kalandar Abdurakhmonov, *Uzbekistan on the Path to Improving the Investment Climate*, EMBASSY OF UZB. IN U.S. (May 10, 2024), <https://uzbekistan.org/uzbekistan-on-the-path-to-improving-the-investment-climate/4504/> [<https://perma.cc/Q3KU-FYY9>].

6. *Uzbekistan Foreign Direct Investment*, TRADING ECON., <https://tradingeconomics.com/uzbekistan/foreign-direct-investment> [<https://perma.cc/5CTP-S4PF>] (last visited Feb. 28, 2025).

partnerships; capital markets; and private investment in the electricity, railway transport, subsoil use, and tourism industries, which are summarized below.

I. Privatization

A. LAW ON PRIVATIZATION OF STATE PROPERTY⁷

The “Privatization Law” covers state-owned immovable property, state shares, state unitary enterprises, and state establishments.⁸ It provides for the following methods of privatization: auction, competitive bidding, public invitation to negotiations, competitive dialogue, stock exchange trades, contribution of state property into the charter capital of a business entity, and lease of a state unitary enterprise/establishment with subsequent privatization.⁹ The State Assets Management Agency and/or its regional divisions (collectively, SAMA), along with any professional experts it chooses to consult with, decides which privatization method is to be used for individual properties.¹⁰ State property may also be privatized directly by the President at its market value.¹¹

For each property to be privatized, the Privatization Law requires an independent appraiser, including internationally-known appraisal organizations, to draft an assessment report regarding the property’s value; this assessment will be used as a guideline in setting the starting price of the property.¹² In order to enhance transparency, SAMA must promptly publish information on its official website regarding the privatizations of state property, including specific details of the property and the privatization process, and after the process has ended, the results of the privatization and material terms of the sale contract.¹³ SAMA also must also publish an annual report of all State property privatized during the previous year and the funds received for the property.¹⁴

B. PRESIDENTIAL RESOLUTIONS ON THE PRIVATIZATION OF STATE PROPERTY

Following the Privatization Law, the President signed three Resolutions on the same topic. The first listed State-owned assets to be privatized through initial and

7. Law of the Republic of Uzbekistan, No. LRU-907, Davlat mulkini xususiyashtirish to’g’risida [On the Privatization of State Property] (Feb. 14, 2024) [hereinafter Privatization Law].

8. *Id.* art. 10. Privatization of state housing stock, non-agricultural land (except state property enterprises), buildings and structures, and unfinished construction projects with land plots) are excluded from this law and are regulated by separate laws of the Republic of Uzbekistan. *Id.* art. 1.

9. *Id.* art. 19. Required procedures for each of these methods are set out in articles 20–27. *Id.* arts. 20–27.

10. *Id.*; 2024 Investment Climate Statements: Uzbekistan, U.S. DEP’T OF STATE, <https://www.state.gov/reports/2024-investment-climate-statements/uzbekistan/> [https://perma.cc/JZ3R-QTCF] (last visited Feb. 28, 2025).

11. Privatization Law, *supra* note 7, at art. 10.

12. *Id.* art. 18.

13. *Id.* art. 35.

14. *Id.* art. 36.

secondary public offerings on the Uzbek stock market.¹⁵ The list included 247 state-owned enterprises,¹⁶ 1028 real estate parcels,¹⁷ and twelve state-owned enterprises subject to IPO and SPO on the local stock market.¹⁸ If any of these assets (excluding those in the capital city of Tashkent and the regional centers) are not sold within three months, the starting bid will be gradually decreased until it reaches ten percent of the asset's value; and if they remain unsold for three months, another privatization method will be used to try to sell the asset.¹⁹

Another 2024 Presidential Resolution²⁰ listed large State-owned enterprises whose majority or minority shares will be publicly traded on international stock markets with the advice of expert consultants to be named later.²¹ The last of the year's Presidential Resolutions regarding privatization ought to improve privatization procedures by, among other things, allowing foreign investors to purchase state shares listed on the Tashkent Republic Stock Exchange using foreign currency.²²

C. ELECTRICAL ENERGY INDUSTRY

As noted above, the unbundling and privatization of the electricity sector is a major component of the Uzbek Government's immediate plans. In 2023, a Presidential Resolution²³ had set out a "Roadmap" for a phased transition to a competitive wholesale and retail electricity market between 2023 and 2030, with the aim of attracting significant private sector investment, improving the quality of services, and offering consumers a choice of electricity suppliers.²⁴ Resolution 166 required the Cabinet of Ministers to adopt an annual plan in December of each year to implement phases of the Roadmap.²⁵ It also:

- (a) Called for the creation of the stock company JSC Uzenergosotish (100% owned by Ministry of Economy and Finance) to act as the central purchaser and seller of electric energy until the establishment of the wholesale and retail market

15. Resolution of the President No. PP-162 (2024) (Uzb.) [hereinafter Resolution No. PP-162].

16. *Id.* annex 1; *Uzbekistan Legal Newsletter for April 2024*, KOSTA LEGAL L. FIRM (Apr. 2024), <https://kostalegal.com/newsletters/uzbekistan-legal-newsletter-for-april-2024> [https://perma.cc/SH45-WEKV].

17. Resolution No. PP-162, *supra* note 15, at annex 2; *Uzbekistan Legal Newsletter for April 2024*, *supra* note 16, at ¶ 3.

18. *Id.*

19. *Uzbekistan Legal Newsletter for April 2024*, *supra* note 16, at ¶ 3. An exception to this rule will be non-agricultural land plots outside the capital city of Tashkent and the regional centers, which will be gradually reduced to thirty percent if unsold after three months, and to ten percent if unsold after six months. *Id.*

20. Resolution of the President No. PP-163 (2024) (Uzb.).

21. *Id.* § 1, apps. 1–2. These enterprises include plants producing thermal power, potash, metals, and autos, a hotel, and assets in the mining and telecommunications sectors. *Id.*

22. Decree of the President No. UP-159 (2024) (Uzb.).

23. Resolution 166, *supra* note 4.

24. *Id.* ¶ 1(a).

25. *Id.* ¶ 1(b).

and to create an online trading platform with prices based on supply and demand;²⁶

(b) JSC National Electric Networks of Uzbekistan is charged with developing electrical networks, providing electricity transmission services via main electrical networks based on approved prices, and integrating Uzbek energy systems with those of neighboring countries;²⁷

(c) Established the Agency for the Development and Regulation of the Energy Market (the Agency) as an energy market regulator to, inter alia, oversee the creation of wholesale and retail electricity markets based on competition, as well as supporting competition in the electricity market, ensuring the attractiveness of the market and balance of supply and demand, licensing electricity market participants and monitoring their compliance, and setting prices for electric transmission and distribution beginning in 2026;²⁸ and

(d) Required the drafting of legal provisions to govern the electricity markets.²⁹

Pursuant to requirement (d), the new Electric Energy Law was enacted in 2024, taking effect on November 9, 2024, and establishing a new framework for the energy market based on Resolution 166.³⁰ The Electric Energy Law provided that the sector's transition from public to private ownership is to be proceed by function, that is, by dividing the transition into components of production, transmission, distribution, supply, sale, and dispatch management.³¹ The structure and rules for the functioning of this market sector are to be developed by a designated regulator and approved by the President.³²

The Agency was designated to regulate, monitor, and control the activities of the electrical market and is responsible for drafting the legal rules for the wholesale and retail markets and monitoring their prices.³³ It is also charged with ensuring healthy competition, licensing market participants and monitoring compliance, creating the methodology for calculating prices and tariffs, coordinating and overseeing

26. *Id.* ¶¶ 2–4.

27. *Id.* ¶¶ 2–3.

28. *Id.* ¶ 5.

29. Resolution 166, *supra* note 4, at ¶ 6.

30. Law of the Republic of Uzbekistan, No. 3PY-939, *Elektr energetikasi to'g'risidagi* [About Electric Power Industry] (Aug. 7, 2024) [hereinafter *Electric Energy Law*].

31. *Uzbekistan Legal Newsletter for August 2024*, KOSTA LEGAL LAW FIRM (Aug. 2024), <https://kostalegal.com/newsletters/uzbekistan-legal-newsletter-for-august-2024> [<https://perma.cc/W4CT-E8HW>].

32. *Electric Energy Law*, *supra* note 30, at art. 12. “Transmission” refers to the provision of transportation services through the grid, as well as the management and maintenance of the grid infrastructure. *Id.* “Dispatch management” involves the overall control of the Unified Energy System's operation, encompassing transmission and distribution lines, generation, and storage facilities. *Id.* The dispatch system operator issues mandatory dispatch instructions to all users of the system to ensure the balance of energy within the system and to maintain its safe, reliable, and uninterrupted operation. *Id.*

33. *Id.* art. 9.

transmission and distribution, and cooperating with governments of neighboring states on cross-border energy issues.³⁴

The Electrical Energy Law introduces the concept of “operators of an electric energy storage system,” who are defined as the parties that enter into contracts for the sale, purchase, and availability of storage capacity.³⁵ It also provides that power plants may be owned by private parties, but at least twenty-five percent of hydroelectric power plants and pumped-storage power plants with an installed capacity of more than 5MW must be owned by the state.³⁶ Owners and operators of transmission and distribution lines must be state-owned joint stock companies, but the State’s share in the charter capital of distribution line operators may be transferred to a third party for fiduciary management.³⁷

Under the Electrical Energy Law, licenses are required for each of the generation, storage, centralized purchase, trading, transmission, distribution, and supply of electric energy and dispatch management.³⁸ Generators and storage facility operators must obtain a license for each power generating/storage facility.³⁹ Licenses are to be granted by the Agency based upon rules for licensing to be approved by the Cabinet of Ministers.⁴⁰ The following, *inter alia*, are the responsibilities of licensees:

Licensees may not suspend, terminate, limit, or expand their licensed activities without the Agency’s written consent except when: (i) the rendered services have not been paid for; (ii) it is otherwise in accordance with the Electric Energy Law or licensing requirements, or (iii) the suspension, termination, limitation of the activities is for technical or safety reasons;⁴¹

Licensees must regularly disclose information about their activities to the Agency;⁴²

Licensees are required to obtain the Agency’s consent for the reorganization of a licensee-entity or the direct or indirect acquisition of more than twenty-five percent of the voting shares of a licensee-entity. Such consent may be refused only in limited cases, such as a serious safety threat or non-compliance with the licensing requirements.⁴³

34. *Id.* arts. 6, 9.

35. *Uzbekistan Legal Newsletter for August 2024*, *supra* note 31 (“It is, however, not entirely clear with whom such contracts for the sale of capacity are supposed to be concluded.”).

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. The Electric Energy Law, *supra* note 30, at art. 52.

42. *Id.*

43. *Id.* art. 54.

D. RAILWAY TRANSPORT

A new Railway Transport Law took effect on January 1, 2025, consolidating earlier efforts to unbundle and privatize the state-dominated railway sector and to foster competition therein.⁴⁴ The Railway Law defines various participants in the railway services market, including container operators, carriers, operators of public rail transport infrastructure, and public rail transport enterprises.⁴⁵ Public railway tracks and operation of public infrastructure and enterprises servicing the public railway tracks belong to the whatever entity is authorized by the government (currently, it is state-owned JSC Uzbekistan Railways).⁴⁶ Public rail infrastructure and mainline locomotives belong to JSC Uzbekistan Railways (or another future-authorized entity) and cannot be sold or transferred to a third party.⁴⁷ But railway transport facilities and land plots “may be transferred to private partners for construction, modernization, and management” under public-private partnership (PPP) agreements based on ownership, lease, or use rights for the duration of the agreement.⁴⁸

The Law also requires licenses to carry passengers and cargo by rail.⁴⁹ Carriers without their own rolling stock must enter into service contracts with container operators and JSC Uzbekistan Railways or another authorized operator of public infrastructure, who is solely in charge of granting access to railway infrastructure.⁵⁰

Fees for railway services generally will be set without restriction.⁵¹ State-regulated fees cover Uzbek public railway infrastructure services, locomotives on public tracks, and domestic passenger transport, excluding high-speed and express trains, and those fees are to be set by an entity authorized by the Cabinet of Ministers.⁵² Any losses arising from passenger transport at the state-regulated fees will be fully compensated by the state budget.⁵³

The Railway Transport Law also ordered the Cabinet of Ministers to approve a Railway Transport Charter, as well as rules for licensing and granting permits, creating fees for public rail transport services, compensating carrier losses from passenger transport at regulated fees, and access to railway infrastructure.⁵⁴

44. Law of the Republic of Uzbekistan, No. ZRU-1006, *Temir yo'l transporti to'g'risidagi* [About Railway Transport] (Nov. 27, 2024) [hereinafter *Railway Law*].

45. *Id.* art. 3.

46. *Id.* art. 11.

47. *Id.* arts. 3, 10.

48. *Id.* art. 33.

49. *Id.* arts. 26, 42.

50. *Railway Law*, *supra* note 44, at arts. 12, 14.

51. *See id.*

52. *Id.* art. 29.

53. *Id.* arts. 28–30.

54. *Id.* art. 7.

II. Accreditation for Representative Offices of Foreign Entities

In Uzbekistan, as in many other countries, a foreign company may choose to open a representative office in order to, inter alia, research the local market and competition, build a customer list, and explore potential partnerships before beginning commercial activity there.⁵⁵

On May 9, 2024, a regulation took effect that changed the procedure for obtaining accreditation certificates for representative offices of foreign business entities.⁵⁶ Applications for accreditation certificates are now submitted either in person to the Ministry of Investments, Industry, and Trade through a local “Centre for Public Services”⁵⁷ or electronically through the Unified Portal of Interactive Public Services.⁵⁸ Applications must be reviewed within five business days.⁵⁹ The application may be approved for one to three years (and extended upon further application).⁶⁰ The new regulation did not change the requirement that all foreign employees of a representative office must be personally accredited, but it added a new requirement that a representative office of a foreign entity cannot hire foreign employees as more than forty percent of the total number of employees, with an absolute cap of five foreign employees.⁶¹

III. Capital Market Regulation

In January 2024, Uzbekistan issued a regulation providing that foreign legal entities that are registered and licensed to operate in a capital market in the United States, United Kingdom, most EU member states, Australia, China, Japan, Turkey, or other countries (thirty-eight in total) can access the Uzbek capital market.⁶² Capital Market Regulation 3493 introduced a special legal regime (the Regulatory Sandbox) that provides for such foreign entities to submit an application, approval of which:

55. Jakhongir Azimov, *Market Control or a Representative Office of a Foreign Company in Uzbekistan*, DIPLOMAT L. FIRM, <https://www.diplomatlaw.com/en/content/market-control-or-representative-office-foreign-company-uzbekistan-0> [<https://perma.cc/S28L-PQZR>] (last visited Feb. 21, 2025).

56. See Resolution of the Cabinet of Ministers No. 996 (2010) (Uzb.).

57. *Id.* ch. 1, ¶ 10.

58. *Id.* ch. 2, ¶ 9.

59. *Id.* ch. 2, ¶ 16.

60. *Id.* ch. 2, ¶¶ 15, 20.

61. *Id.* ch. 3, ¶ 26.

62. Order of Director of National Agency of Promising Projects of Republic of Uzbekistan, No. 104, Kapital bozori sohasida “tartibga soluvchi sandbox” maxsus huquqiy rejimni ta’minlash tartibi to’g’risidagi nizomni tasdiqlash haqida [On Approval of the Regulation on the Procedure for Providing a Special Legal Regime “Regulatory Sandbox” in the Capital Market] (Dec. 26, 2023 registered with the Ministry of Justice, No. 3493 as of Jan. 29, 2024) [hereinafter Capital Market Regulation 3493].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

262 THE YEAR IN REVIEW

[VOL. 59]

- (1) Allows a foreign investment intermediary⁶³ to act as an investment intermediary in Uzbekistan and open depository accounts;⁶⁴
- (2) Allows a foreign nominee holder⁶⁵ to open securities accounts and carry out securities-related activities in Uzbekistan, directly or through an agent, while not being considered the beneficial owner of securities or funds recorded in their Uzbek account;⁶⁶
- (3) Allows foreign nominee holders to carry out their activities in Uzbekistan without the requirements of obtaining a separate license or permit, creating a branch or new legal entity, or participating in the authorized capital of a local legal entity;⁶⁷
- (4) Allows foreign nominee holders who buy or sell securities at organized auctions to open accounts in Uzbek currency with the Uzbek Central Bank and deposit accounts with the Uzbek Central Securities Depository and the depository system of the Uzbek national foreign currency exchange;⁶⁸
- (5) Allows a foreign legal entity trading securities through organized trades to open accounts in the Uzbek national currency in Uzbek commercial banks;⁶⁹
- (6) Provides that a foreign investment intermediary's employee qualification certificates obtained in an approved jurisdiction will enable those employees to

63. A "foreign investment intermediary" is defined as:

[A]n investment company (investment or depository bank, broker or investment intermediary), global custodian, custodian, bank, or other legal entity authorized to carry out professional activities in the securities market of a recognized foreign jurisdiction, equivalent to the professional activities of an investment intermediary, as defined by [the Uzbek securities law].

Id. ch. 1, ¶ 1.

64. *Id.* ch. 2, ¶ 9.

65. "Foreign nominee holder" is defined as:

[A] foreign investment intermediary, a foreign or international central securities depository, recognized by the authorized state body for regulation of the securities market of . . . Uzbekistan following consultations with the Central Bank of . . . Uzbekistan, having the authority to carry out professional activities including act on behalf of and on the instructions of their foreign clients (foreign beneficial owners or other foreign nominee holders); carry out settlements with securities if they are a foreign or international central securities depository; carry out settlements with securities and cash for their foreign clients on the basis of settlements of a foreign or international central securities depository based on the results of trading on foreign exchanges regulated by a foreign authorized state body for regulating the securities market; [and] transfer, register, keep records, store and/or confirm rights to securities on behalf of or on behalf of its foreign clients.

Id. ch.1, ¶ 1.

66. *Id.* ch. 2, ¶ 9.

67. *Id.*

68. Capital Market Regulation 3493, *supra* note 62, at ch. 2, ¶ 9.

69. *Id.*

carry out securities transactions in Uzbekistan without obtaining a specialist qualification certificate in Uzbekistan;⁷⁰ and

(7) Provides that the transfer of securities to or from a foreign nominee's account by means of a "free of payment transfer of securities" that does not change the beneficial owner of the securities is not considered a sale of these securities and does not create a tax liability for any of the parties.⁷¹

IV. Public-Private Partnerships

In an effort to attract private investment of over USD 30 billion by 2030, the President of Uzbekistan issued a plan in 2024 to develop PPPs for the next six years⁷² and promote private sector participation in crucial infrastructure projects, especially in transportation, energy, education, health care, and other industries.⁷³

A list of PPP projects to be carried out in 2024–2030 and the method of carrying out each project are set out in annexes to the Resolution.⁷⁴ These projects include some that are already at least partially funded (e.g., construction of schools to be carried out with support from the Asian Development Bank, International Finance Corporation, and European Bank for Reconstruction & Development⁷⁵), and encompass the construction of airports, toll roads and tunnels, regular highways and roads, hydroelectric power stations, water supply and sewage treatment facilities, trash disposal facilities, hospitals, educational institutions, and biolaboratories; the modernization of railway stations, heat supply systems, and irrigation pumping stations; and the privatization of power distribution lines, the gas distribution network, electrical power networks and grids, and portions of public transportation.⁷⁶

The Resolution also mandates the creation of a Center for Public-Private Partnership Projects (PPP Center) within the Ministry of Economy and Finance (MoEF), which will oversee the implementation of the State's PPP plans and will organize international roadshows, seminars, and roundtables to spur interest from potential investors, as well as providing for training and certification of local PPP management specialists.⁷⁷ The Center shall develop a digital platform (Registry) for PPP project procurement, including a list of all such projects.⁷⁸

70. *Id.*

71. *Id.*

72. Decree of the President No. PP-308 (2024) (Uzb.) [hereinafter Resolution PP-308].

73. *The Presidential Decree No. PP-308: Measures on the Development of Public-Private Partnerships for 2024–2030*, KOSTA LEGAL L. FIRM (Sept. 16, 2024), <https://kostalegal.com/publications/legal-highlight/the-presidential-decree-no-pp-308-measures-on-the-development-of-public-private-partnerships-for-2024-2030-2> [https://perma.cc/WC95-3SDZ].

74. Annex 1 deals with "Measures for the Implementation of Priority PPP Projects in 2024–2026," and annex 2 deals with "The program of projects to be implemented . . . in 2024–2030." Resolution PP-308, *supra* note 72, at annexes 1–2.

75. *Id.* annex 2, tbl. I (1.1–1.3).

76. *Id.* annex 2, tbls. I–VII.

77. Decree of the President No. PP-308 (2024) (Uzb.).

78. *Id.*

The Resolution set out several necessary actions to allow for the creation of direct investment funds with the involvement of international financial institutions and foreign commercial banks for financing PPP projects, addressing inconsistencies between Uzbek and western national standards, and drafting a new law setting the maximum obligations of the government (take or pay) and governing the issuance of confirmation (comfort) letters under PPP projects.⁷⁹

Relatedly, the Cabinet of Ministers adopted another Resolution on the development of PPPs,⁸⁰ which provided that: (i) ministries, departments, and local municipalities must publish tender documentation, project concept notes, and terms of PPP agreements for projects valued over USD 10 million on the international platform “Source” to attract foreign investors; and (ii) by April 1, 2025, the MoEF should submit a draft Law amending the Law “On Public-Private Partnership” to the Cabinet of Ministers, developed based on international practice.⁸¹ This Resolution also approved a new Regulation on PPP project implementation, which liberalizes the eligibility criteria for implementing projects under the PPP structure and the qualification requirements for bidders.⁸² It also clarifies procedures for conducting public hearings and allocating land.⁸³ For projects valued at USD 10 million or more, the public partner is required to engage international or local consultants.⁸⁴ Additionally, project concept notes, project assessment documents, and PPP agreements must now be registered with the special registry of the MoEF to be considered valid.⁸⁵ This requirement builds upon another important Resolution passed by the Cabinet of Ministers in 2023, which mandated that, at the outset of project development and upon finalizing the PPP agreement, the public partner must identify all direct and contingent state liabilities that may arise in relation to the project and obtain MoEF’s approval.⁸⁶

V. Tourism Industry

A January 2024 Presidential Decree on the development of tourism⁸⁷ provided for the creation of “tourist centers” (i.e., modern hotels and shopping and entertainment complexes with an area of over 5000 square meters) in districts and cities with high tourism potential, and large shopping complexes consisting of duty-free shops and international-brand retail stores in the Zomin recreational zone, the Chimgan all-season resort, and the Amirsoy ski resort.⁸⁸

79. *Id.*

80. See Resolution of the Cabinet of Ministers No. 720 (2024) (Uzb.).

81. *Id.* chs. (5)–(6).

82. *Id.* ch. (6).

83. See *id.* chs. 3(11), 13.

84. *Id.* ch. 2(5).

85. *Id.* ch. (5).

86. See Resolution of the Cabinet of Ministers No. 558 (2023) (Uzb.).

87. See generally Decree of the President No. UP-9 (2024) (Uzb.).

88. *Id.*

In addition, the Decree ordered the creation of a USD 200 million credit line to finance tourism projects.⁸⁹ In order to incentivize foreign investors to participate in the Uzbek tourism industry, the Decree exempted from customs duties all imported equipment, machinery, furniture, and materials for the construction and reconstruction of hotels and other accommodations, analogues of which are not produced in Uzbekistan, from March 1, 2024 to March 1, 2026.⁹⁰

On July 18, 2024, another Presidential Decree,⁹¹ aimed at encouraging the development of the tourism industry, provided a roadmap to increase the number of foreign and local tourists in Uzbekistan.⁹² In addition, relevant ministries were tasked with developing and submitting a program to develop “extreme” tourism in the Moynaq district (a former Aral Seaport now 150 km into the Aralkum Desert and therefore a “environmental disaster tourism” location),⁹³ and the Parkent district, a mountainous region just outside Tashkent, to the Cabinet of Ministers by August 2024.⁹⁴ Also, the Tourism Committee and the MoEF were tasked with developing and submitting a draft resolution aimed at creating a more favorable environment for business tourism.⁹⁵

The Cabinet of Ministers adopted an additional Resolution on tourism in September 2024,⁹⁶ ordering several state Ministries to take certain actions to facilitate new types of tourism, including:

- (i) Industrial tourism (allowing tourists to see production processes);
- (ii) Science tourism (e.g., visiting scientific research institutes, observatories, and planetaria);
- (iii) Military tourism (e.g., visiting military history sites, monuments and events, participating in shooting sports);
- (iv) Geological tourism (seeing processes involved in mineral resource mining, seeing natural geologic objects, mountain excursions, or listening to experts in such fields); and
- (v) State-managed tourism (visiting places related to politics, state history and government activities, such as government buildings and structures).⁹⁷

Further, the Ministry of Digital Technologies was instructed to provide, for a trial period before the end of 2024, active SIM cards for one month free of charge

89. *Id.* ch. (9).

90. *Id.* ch. (14).

91. *See generally* Decree of the President No. UP-102 (2024) (Uzb.).

92. *Id.*

93. *Moynaq*, WIKIPEDIA, <https://en.wikipedia.org/wiki/Moynaq> [<https://perma.cc/5HJP-KSSY>] (last visited Feb. 28, 2025); *World of Change: Shrinking Aral Sea*, NASA EARTH OBSERVATORY, <https://earthobservatory.nasa.gov/world-of-change/AralSea> [<https://perma.cc/6RPD-HXTX>] (last visited Feb. 28, 2025).

94. *Parkent*, UNESCO WORLD HERITAGE CTR., <https://visitworldheritage.com/en/eu/parkent/d27dd944-e0ce-416e-87a3-0d9580c88910> [<https://perma.cc/TVH3-SPRB>] (last visited Feb. 28, 2025).

95. *Id.*

96. *See generally* Resolution of the Cabinet of Ministers No. 582 (2024) (Uzb.)

97. *Id.* ch. (2).

to tourists at airports, railway stations and border crossing points,⁹⁸ and various Ministries were required to ensure that:

- (a) Local and foreign car rental companies (e.g., Hertz, Avis, Sixt, et al.) may provide services at airports and railway stations;
- (b) Tourist destinations and routes are integrated into Apple and Google Maps and are regularly updated; and
- (c) International online payment systems (such as Paypal, Alipay, UniPay, Apple Pay, and Google Pay) become operational in Uzbekistan, with applicable laws being amended where required.⁹⁹

Beginning on October 1, 2025, an experimental “Tourist Map” interactive portal will be launched at the Samarkand International Airport, with a full rollout of the portal at other busy airports, railway stations, and bus terminals by September 1, 2026.¹⁰⁰ Lastly, the administration of the Tashkent region, together with the Ministries of Ecology, Environmental Protection and Climate Change (the Ministry of the Environment), the Transport, and Economy & Finance was instructed to create a tourism development plan for the Tashkent region in 2025–2027, which provides, inter alia, for the implementation of complex infrastructure projects based on public-private partnership and cluster approach in tourist/recreational zones and developing hotels and roads to ease tourists’ travels in the region.¹⁰¹

VI. Subsoil Use

In October 2024, the new Law on Subsoil¹⁰² was adopted, serving as the primary law for the oil, gas, and mining industries and defining the following types of subsoil use rights: geological study of solid minerals, extraction of solid minerals, hydrocarbon exploration, geological study of hydrocarbons, extraction of hydrocarbons, geological study for underground storage purposes, underground storage, artisanal mining, and collection of sample materials.¹⁰³ Each type of subsoil use right is granted through a permit for the use of subsurface areas.¹⁰⁴ The Subsoil Use Centre issues permits for all types of subsoil use except those related to the use of subsurface space for the construction and operation of underground waste storage and disposal facilities (excluding hydrocarbon storage), which are issued by the Ministry of Ecology, Environmental Protection, and Climate Change.¹⁰⁵ Most permits may also be granted through alternative methods: (i) tendering or auctioning; and (ii) based on decisions by the President and the Cabinet of

98. *Id.* ch. (6).

99. *Id.* ch. (8).

100. *Id.* ch. (7).

101. *Id.* ch. (9).

102. Law of the Republic of Uzbekistan, No. 3PY-987, *Er qa’ri to’g’risidagi* [About the Bowels] (Oct. 31, 2024) [hereinafter *Bowels Law*].

103. *Id.* art. 30.

104. *Id.* art. 31.

105. *Id.*

Ministers.¹⁰⁶ Only citizens and residents of Uzbekistan, as well as companies registered in Uzbekistan, may apply for permits and become subsoil users.¹⁰⁷ Applicants must disclose their beneficiaries.¹⁰⁸ Permits are granted on a “first-come, first-served” basis.¹⁰⁹

A person holding a permit for geological exploration and mineral extraction may, with the consent of the Subsoil Use Centre, transfer their rights under the permit, including providing them as collateral or security to another party, provided that the latter assumes the obligation to fulfil the conditions outlined in the permit.¹¹⁰

The Law provides the following special guarantees for holders of permits for the extraction of hydrocarbons: (i) the purchase of a portion of the extracted hydrocarbons by state authorities and enterprises under separate agreements; (ii) full access to transportation, processing facilities, and other relevant infrastructure for the extracted hydrocarbons; and (iii) the right to export to third parties a portion of the extracted natural gas on market terms, based on the principle of impartiality between the parties, at international market prices under separate agreements.¹¹¹

The Law introduces minimum local content requirements for subsoil users, including those related to employees, procured goods, works, and services, as well as the obligations to train local personnel and share communication channels.¹¹² It also sets detailed rules for the liquidation of the consequences of subsoil use.¹¹³ Hence, among other things, before commencing any planned subsoil use activities, a subsoil user must prepare a preliminary plan for the decommissioning of the subsoil area.¹¹⁴ Subsoil users with valid subsoil use permits are required to submit a plan for mitigating the consequences of subsoil use no later than two years from the date the Law enters into force, unless they have submitted a new or updated field development plan before that date.¹¹⁵

It is envisaged that, within five years from the date the Law enters into force, the subsoil management and disposal system will be gradually restructured based on the introduced cadastral grid system.¹¹⁶ All permits, as well as production-sharing agreements or investment agreements concluded before the establishment of the cadastral grid system, shall be issued under the existing system.¹¹⁷

106. See *id.* arts. 26, 51, 83.

107. *Id.* art. 117.

108. See generally Bowels Law, *supra* note 102.

109. *Id.* art. 31.

110. *Id.* art. 111.

111. *Id.* art. 99.

112. *Id.* arts. 155–157.

113. See *id.* ch. 15.

114. See generally Bowels Law, *supra* note 102, at arts. 55, 68, 79, 82, 85, 110, 139, 140.

115. *Id.* arts. 138–154.

116. *Id.* art. 168(1).

117. *Id.* art. 168(3).

KAZAKHSTAN

In the past two decades, Kazakhstan has undergone tremendous economic growth driven by liberalizing reforms to its economy, foreign direct investment, petrochemicals, and minerals/natural resources extraction.¹¹⁸ The Kazakh government predicted GDP growth of at least 5.3% in 2024, up from 5.1% in 2023,¹¹⁹ and the country leads Central Asia and the Caucasus in the number of venture capital deals.¹²⁰ This economic liberalization continued in 2024 with the President's issuance of a major multi-year economic plan.¹²¹

VI. Liberalization Decree

On May 10, 2024, President Kassym-Jomart Tokayev signed a Decree¹²² aimed at reducing the state's participation in the economy in order to encourage entrepreneurship, lower the costs of doing business, and developing a competitive market environment.¹²³ The introductory paragraph of the decree sets out its basic principles as:

- (1) Ensuring the inviolability of private property;
- (2) Furthering the freedom of private entrepreneurial activity and prevention of illegal state interference in markets;
- (3) Developing and protecting free competition;
- (4) Eliminating regulatory and administrative barriers to market access and advantages for quasi-public sector entities; and
- (5) Reducing business costs in dealing with government agencies.¹²⁴

118. *The World Bank in Kazakhstan*, WORLD BANK GRP., <https://www.worldbank.org/en/country/kazakhstan/overview> [<https://perma.cc/27DW-J53D>] (last visited Feb. 28, 2025).

119. Aigerim Sultanbekova, *New Strategy for Kazakhstan's Economy: Structural Renewal and Liberalization*, KAZ. INST. OF STRATEGIC RSCH. UNDER PRESIDENT OF REPUBLIC OF KAZA. (June 5, 2024), <https://kisi.kz/ru/novaya-strategiya-ekonomiki-kazahstana-strukturnoe-obnovlenie-i-liberalizatsiya/> [<https://perma.cc/XC4H-VBPF>].

120. *Id.*

121. See generally Decree of the President No. 542 (2024) (Kaz.).

122. *Id.*

123. Madina Usmanova, *President of Kazakhstan Signs Decree on Measures to Liberalize Economy*, TREND NEWS AGENCY (May 10, 2024), <https://en.trend.az/casia/kazakhstan/3897809.html> [<https://perma.cc/JW6M-ZJW6>]; see also Sanjida Jannat, *Kazakhstan Initiates Economic Liberalization with President Tokayev's Landmark Decree*, DIPLOMATIC AFFAIRS (May 12, 2024), <https://www.thediplomaticaffairs.com/2024/05/12/kazakhstan-initiates-economic-liberalization-with-president-tokayevs-landmark-decree> [<https://perma.cc/2XSU-P62Z>] (“The measures outlined in the decree are anticipated to create a more conducive environment for business and investments, fostering a competitive market economy. The long-term effects of these reforms will depend on the government’s commitment to their rigorous and transparent application, and their ability to adapt and respond to the evolving needs of the Kazakh economy.”).

124. See Decree of the President No. 542, art. 1 (2024) (Kaz.).

The Liberalization Decree outlines several key measures, each targeting a different aspect of the Kazakh economy.¹²⁵

First, a National Privatization Office (NPO) was created under the auspices of the existing Agency for the Protection and Development of Competition, for the purpose of developing standards for assessing which state assets are to be privatized, analyzing all state-owned enterprises and legal entities that are over fifty percent owned by the State and affiliated individuals, and deciding which entities should be mandatorily privatized.¹²⁶ Such privatization is to take place before December 31, 2028.¹²⁷ The NPO was instructed to create and publish a list of the state assets to be privatized, along with the methods of privatization (e.g., IPO, SPO, auction, et al.) to be used for each.¹²⁸ It is further charged with monitoring the progress of the privatizations.¹²⁹

Second, in order to further encourage private entrepreneurship, the State will actively seek to prevent any increase in state-owned enterprises in competitive areas by:

- (a) Placing a moratorium on creating any quasi-public sector entities until December 31, 2026 (except those necessary to return illegally acquired assets to the state or other special cases directed by the President);
- (b) Auditing all state and quasi-state assets at local and regional levels by the end of 2024 and subsequent updating of the unified public register of state property;
- (c) Revising the list of permitted activities for quasi-state entities, including by geographical boundaries and length of time in the market, and revising the existing legislative grounds for the State to participate in business activities;
- (d) Completing the privatization of state assets by December 31, 2028, in accordance with the list to be made by the NPO, with no borrowed or other funds from the State being used in such asset purchases; and
- (e) Not allowing private monopolies to form during privatization (except entities with “natural monopolies”).¹³⁰

Third, the Liberalization Decree includes measures to increase the quality, independence, and autonomy of corporate governance of State’s National Welfare Fund (i.e., sovereign wealth fund) “Samruk-Kazyna” (the Fund) and its subsidiaries

125. *Kazakhstan-Economy-Liberalization-Decree*, ITALIAN TRADE AGENCY (May 13, 2024), <https://www.ice.it/it/news/notizie-dal-mondo/262839> [<https://perma.cc/ZDL8-GFY5>] (last visited Mar. 6, 2024); see Lola Abdukhalykova et al., *Main Changes and/or Additions to the Legislation of Kazakhstan in the Field of Electric Power Industry and Public-Private Partnership in the First Quarter of 2024*, GRATA INT’L, June 16, 2024, at 4–8.

126. Decree of the President No. 542, art. 1 (2024) (Kaz.).

127. *Id.* art. 2(5).

128. *Id.* art. 2(3); see also Sanjida Jannat, *Kazakhstan Initiates Economic Liberalization with President Tokayev’s Landmark Decree*, DIPLOMATIC AFFS. (May 12, 2024), <https://www.thediplomatic-affairs.com/2024/05/12/kazakhstan-initiates-economic-liberalization-with-president-tokayevs-landmark-decree> [<https://perma.cc/BRW7-B92Q>].

129. *Id.*

130. Decree of the President No. 542, art. 1 (2024) (Kaz.).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

270 THE YEAR IN REVIEW

[VOL. 59]

and affiliates, as well as to improve its internal governance and procurement procedures,¹³¹ such as streamlining and making them more transparent.¹³² For example, by the end of the summer of 2024, the State was ordered to reform the procedures for appointing or electing the different boards of directors of the Fund and its affiliates to make them more predictable and transparent;¹³³ make elections for independent directors competitive;¹³⁴ and to review the Fund's system of procurement in coordination with the National Chamber of Entrepreneurs and two government agencies to increase transparency of those processes.¹³⁵

Fourth, the Liberalization Decree ordered specific measures to be taken in order to increase competition and develop entrepreneurship.¹³⁶ Changes in the markets for fuel and energy, transportation, and communications were set out with specific deadlines, and include breaking apart existing monopolies and oligopolies.¹³⁷ Reforms to improve regulatory policies and to simplify the procedures required to start and operate a business were also included, such as automating access to commercial and regulatory services provided by quasi-governmental agencies and to access utilities,¹³⁸ and increasing the effectiveness of enforcement of business regulations at the regional level.¹³⁹ In addition, the decree expanded opportunities to open new banks and subsidiaries and branches of foreign banks, ordered a substantial reduction in the State's market share in supplying oil to oil refineries, and mandated the revision of public procurement laws for goods and services to allow such procurement to be contracted directly with suppliers or service-providers.¹⁴⁰

Lastly, the Liberalization Decree seeks to protect the "rights and legitimate interests of business," by decriminalizing certain economic offenses and mandating coordination between prosecutors and government agencies on government restrictions,¹⁴¹ as well as establishing administrative liability for obstruction of lawful business activities if they do not rise to the level of a criminal offense.¹⁴² The revision of requirements for obtaining permits was ordered, along with improvements in the procedures and timing for obtaining them.¹⁴³

131. See Sultanbekova, *supra* note 119.

132. See Jannat, *supra* note 128.

133. Decree of the President No. 542, art. 1 (2024) (Kaz.).

134. See *id.*

135. See *id.*; see also Abdukhalykova, *supra* note 125, at 4.

136. Decree of the President No. 542, art. 1 (2024) (Kaz.).

137. See *id.*; see also Jannat, *supra* note 128.

138. See *id.*; see also Dana Omirgazy, *Kazakh President Signs Decree on Measures to Liberalize Economy*, ASTANA TIMES (May 11, 2024), <https://astanatimes.com/2024/05/kazakh-president-signs-decree-on-measures-to-liberalize-economy> [<https://perma.cc/2Y46-2T2F>].

139. Decree of the President No. 542, art. 1 (2024) (Kaz.).

140. *Id.* arts. 4(1)–(2), 5(1).

141. See Omirgazy, *supra* note 138.

142. Decree of the President No. 542, art. 1 (2024) (Kaz.).

143. *Id.* art. 6(5).

VII. Electric Power Industry

A. ACTION PLAN

In the past thirty years, Kazakhstan's power industry has undergone substantial changes.¹⁴⁴ First, its state monopoly was unbundled into generation, transmission, and distribution portions, then came the ongoing privatization of many generating and distribution assets, followed by creation of a "multi-market model with bilateral long-term, spot, balancing, system, and ancillary services and capacity markets"¹⁴⁵ and the introduction of renewable energy sources.¹⁴⁶ But setbacks during those years included re-institution of excessive government control and long delays in creating a balancing market.¹⁴⁷ Further, after the Soviet Union's dissolution in the early 1990's, Kazakhstan was unable to attract sufficient foreign investment, leading to the obsolescence of many power plants and grids.¹⁴⁸ The Kazakh electric grid become sorely overtaxed in recent years as crypto-mining companies leased or bought space in the vast country and likely led to numerous power outages.¹⁴⁹ In recent years, Kazakhstan has had to purchase electricity from Russia to meet almost five percent of its domestic needs, which is concerning for historical and national security reasons.¹⁵⁰

In February 2024, the Ministry of Energy approved an "Action Plan"¹⁵¹ for the development of Kazakhstan's electric power industry, to be completed by 2035.¹⁵² The Action Plan provides specific projects and deadlines for the construction of new electric power facilities, as well as the reconstruction, modernization and/or expansion of existing facilities.¹⁵³

Focusing especially on renewable energy sources, the Action Plan calls for the installation of 17.5 GW of new capacity.¹⁵⁴ Of that total, 6.5 GW would come from wind and solar generation, 2.1 GW from hydroelectric power plants, 5.1 GW from gas generation, 1.4 GW from coal generation, and 2.4 GW from nuclear power.¹⁵⁵ If the plan meets its goals, by 2035, about 24.4% of Kazakhstan's power

144. See Tatiana Lanshina et al., *Modernizing Kazakhstan's Coal-Dependent Power Sector through Renewables*, Agora Energiewende, at 5 (Feb. 28, 2024), https://www.agora-energiewende.org/file-admin/Projekte/2023/2023_27_PST_Kazakhstan_2023/A-EW_319_Kazakhstan_2023_EN_WEB.pdf [<https://perma.cc/FX7N-HHQQ>].

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. See Tony Pizur, *Did Cryptocurrency Miners Crash the Central Asian Power Grid?*, CENT. ASIA-CAUCASUS ANALYST (Feb. 22, 2022), <https://www.cacianalyst.org/publications/analytical-articles/item/13709-did-cryptocurrency-miners-crash-the-central-asian-power-grid> [<https://perma.cc/8FFE-ZDCR>]; see also Lanshina et al., *supra* note 144, at 10.

150. See *id.*

151. See Order of the Cabinet of Ministers No. 71 (2024) (Kaz.).

152. See *id.*

153. See *id.*

154. See *id.*

155. See *id.*

capacity would come from renewable energy sources,¹⁵⁶ while 25.8% would be gas-generated, 10.8% would be hydroelectric, 34.3% would be coal-generated, and 4.7% would come from nuclear power plants.¹⁵⁷

B. NUCLEAR POWER REFERENDUM

In October 2024, Kazakhstan held a referendum on whether to construct a new nuclear power plant to meet its urgent energy needs¹⁵⁸ and to capitalize on Kazakhstan's role as the world's largest producer of uranium, accounting for forty-two percent of the world's production in 2022.¹⁵⁹ Over seventy-one percent of voters approved the referendum.¹⁶⁰ The site of the new plant will be in the southeastern part of the country, in the semi-deserted town of Ulken on the western shore of Lake Balkhash, about 330 kilometers northwest of Almaty.¹⁶¹

While most of Kazakhstan's power projects have relied on concessional lending from multilateral banks like the European Bank for Reconstruction and Development (EBRD) and the Eurasian Development Bank, the new nuclear plant's estimated cost of USD 12 billion will be financed by the contractors chosen for the project.¹⁶² Based on public information reported in the press, even before the referendum there was a "short list" for potential contractors:

- (1) China National Nuclear Corporation (CNNC), a Chinese state-owned company;
- (2) Korea Hydro & Nuclear Power (KHNP), a *subsidiary of the Korea Electric Power Corporation* (KEPCO), wholly owned by the Government of South Korea;
- (3) Rosatom State Corporation, the Russian state-owned atomic energy company; and

156. In mid-2023, the share of the overall Kazakh power sector comprising renewable energy sources was only five percent. See Lanshina et al., *supra* note 144, at 3.

157. See Order of the Cabinet of Ministers No. 71 (2024) (Kaz.).

158. See *Referendum on NPP in Kazakhstan to be held on October 6, 2024 – Tokayev*, RADIO AZATTYK, <https://rus.azattyq.org/amp/33102329.html> [<https://perma.cc/JHK2-YN6U>] (last visited Mar. 5, 2025).

159. See Georgi Gotev, *Kazakhstan to Hold Referendum on First Nuclear Plant*, EUCRATIV (Sept. 1, 2023), <https://www.euractiv.com/section/central-asia/news/kazakhstan-to-hold-referendum-on-first-nuclear-plant/> [<https://perma.cc/6C3F-DZ9P>].

160. See Press Release, Central Election Commission of the Republic of Kazakhstan, The Central Referendum Commission of the Republic of Kazakhstan Has Announced the Preliminary Results of Voting in the Republican Referendum (July 10, 2024), <https://www.election.gov.kz/eng/news/releases/index.php> [<https://perma.cc/G2RZ-SR4B>].

161. See Haley Nelson, *Kazakhstan's New Nuclear Problem: Lake Balkhash*, CASPIAN POL'Y. CTR. (Feb. 22, 2024), <https://www.caspianpolicy.org/research/kazakhstan/kazakhstans-new-nuclear-problem-lake-balkhash> [<https://perma.cc/L9AF-H6HF>].

162. See Xhoi Zajmi, *Kazakhstan Accelerating Nuclear Power Plant Construction, Leading Central Asia's Energy Transition*, EURACTIVE (Feb. 18, 2025), <https://www.euractiv.com/section/eet/news/kazakhstan-accelerating-nuclear-power-plant-construction-leading-central-asias-energy-transition> [<https://perma.cc/9FF4-XD68>].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

EURASIA 273

- (4) Électricité de France (EDF), a multinational electric utility company owned by the government of France.¹⁶³

163. See Shaimerden Chikanayev, *A Short Note from the Lawyer on the Topic: How the Contractor for the Construction of a Nuclear Power Plant in Kazakhstan Will Be Selected?*, GRATA INT'L (Oct. 4, 2024), <https://gratanet.com/publications/a-short-note-from-the-lawyer-on-the-topic-how-the-contractor-for-the-construction-of-a-nuclear-power-plant-in-kazakhstan-will-be-selected> [<https://perma.cc/52Y7-KGN9>] (criticizing the formation of the “short list” as contrary to Kazakh legal requirements).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

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European Law

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This Article updates selected international legal developments in 2024 relating to European Law and legal practice.

I. Recent Developments in the Primacy of EU Law over Member State Law

The relationship between European Union (EU) law and Member State law has been a cornerstone of European jurisprudence since the early days of the European Economic Community (the predecessor of the European Union) with the European Court of Justice (ECJ) slowly and constantly affirming the primacy and supremacy of EU law over Member State laws (or to use U.S. legal language, Member State law is preempted by EU law, where the latter applies) even without a seminal case such as *Marbury v. Madison*¹ or the presence of a Chief Justice like John Marshall.

The tension between EU law and Member State law has been ongoing, as Member States (or better Member States' branches, including courts) have often resisted—legally—the ECJ decisions on the primacy of EU law.² Most recently, in Italy there have been decisions by Italian courts on immigration laws applying EU law over Italian law, which have sparked a heated political debate over EU law and whether it actually has supremacy over Italian law.³

Since its first case in point in 1964, the ECJ has strongly declared and affirmed the primacy of EU law, the duty of national judges to apply EU law in lieu of Member State law, and the power under EU Law to temporarily halt the proceedings and remit the matter to the ECJ for a preliminary ruling on the matter in the event the

* James Henry Bergeron, Liz Mosler (Major Changes to EU Copyright Law in 2019), Luigi Pavanello (Recent Developments in the Primacy of EU Law over Member State Law), Pascale Longuet and William B. Bierce.

1. See *Primary of EU Law*, EUR-LEX, <https://eur-lex.europa.eu/EN/legal-content/glossary/primacy-of-eu-law-precedence-supremacy.html> [<https://perma.cc/K5XK-4E9A>] (last visited Apr. 12, 2025); see generally *Marbury v. Madison*, 5 U.S. 137, 1 (1803).

2. See *Italian Judges Pose Four Questions to European Court*, INFOMIGRANTS (Nov. 13, 2024), <https://www.infomigrants.net/en/post/61145/italian-judges-pose-four-questions-to-european-court> [<https://perma.cc/3E2W-BMHL>].

3. See *id.*

court has doubts over the application of EU law, or whether EU or national law applies.⁴

In light of this firm and continuous flow of jurisprudence by the ECJ, many member states have amended their constitutions so that the state is expressly limited in its powers by EU law and systems.⁵ Despite this evolution in the law, there are still areas of uncertainty, including the relationship between the Member States' Constitutional Courts and the ECJ in the interpretation and application of EU law.⁶ A recent ECJ case dealt directly with this issue, with very important holdings prompting pushback from a national Constitutional Court in 2023 and 2024.⁷ The case C-430/21 arose from a request for a preliminary ruling under Article 267 TFEU⁸ from the Curtea de Apel Craiova (Court of Appeal, Craiova, Romania).⁹ The ECJ convened the case in Grand Chambers format, signaling its importance.¹⁰ The Romanian constitution expressly recognizes the supremacy of EU law, and the Romanian Government (executive, legislative, and court) guarantees compliance with the obligations deriving from the Treaties to adhere to the supremacy of EU law.¹¹

The facts of the Romanian case are as follows: an electrician employee died of electrocution.¹² An administrative proceeding against the employer and a criminal proceeding against the team foreman were commenced.¹³ The relatives of the deceased were a party in the criminal proceeding.¹⁴ The administrative court ruled that it was not a work-related incident and canceled all of the fines imposed upon the employer.¹⁵ This decision caused the criminal proceeding to be dismissed because, according to Romanian law as interpreted by its Constitutional Court, this decision barred the criminal court from further review of the case to ascertain whether it was indeed a work-related incident.¹⁶

The Court of Appeal of Craiova requested a preliminary ruling on the following issues: (i) whether the aforementioned Romanian laws, as interpreted by the

4. See Case C-6/1964, *Costa v. ENEL*, 1964 E.C.R. 585; see also *Costa v. ENEL Judgment: 60 Years On*, EPRS (July 2024), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762361/EPRS_BRI\(2024\)762361_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762361/EPRS_BRI(2024)762361_EN.pdf) [<https://perma.cc/JDM8-JMHG>].

5. Costituzione della Repubblica Italiana [Constitution], Dec. 22, 1947, art. 117 (It.).

6. See EUR-LEX, *supra* note 1.

7. See Case C-430/21, EU:C:2022:99, ¶ 25 (Feb. 22, 2022), https://curia.europa.eu/juris/document/document_print.jsf [<https://perma.cc/8S3V-8GT7>].

8. *Id.*; see Consolidated Version of the Treaty on the Functioning of the European Union art. 267, Oct. 26, 2012, <https://perma.cc/45DN-VW48> [hereinafter TFEU].

9. TFEU, *supra* note 8, at art. 267.

10. *Court of Justice - Presentation*, CT. JUST. E.U., https://curia.europa.eu/jcms/jcms/Jo2_2024/en [<https://perma.cc/T6CB-BX2A>] (last visited Apr. 10, 2025).

11. Constituția României (Constitution), Dec. 8, 1991, art. 148(2), (4), (Rom.).

12. See Case C-792/22, *MG v. Parchetul de pe lângă Judecătoria Rupea et al.*, ¶ 15 (Sept. 26, 2024), <https://eur-lex.europa.eu/legal-content/en/txt/html/?uri=CELEX:62022CJ0792> [<https://perma.cc/P4Z6-SHAQ>].

13. See *id.* ¶ 17.

14. See *id.* ¶ 16.

15. See *id.* ¶ 20.

16. See *id.* ¶ 29.

Romanian Constitutional Court, in compliance with EU Directive 89/391;¹⁷ and (ii) whether a lower court should apply EU law despite a contrary national Constitutional Court decision.¹⁸

After a lengthy description of the ECJ jurisprudence in point, in particular, in respect of the rule of law and primacy of EU law, the Court held that in this case Romanian law as interpreted by the Romanian Constitutional Court violated EU law (Directive 89/391) because it hinders and impedes the exercise of the rights granted by EU law.¹⁹ Specifically, in a court proceeding a fundamental right is the right to be heard, so that if a court considers a decision on liability, as happened here, without permitting the interested parties to present their arguments, then that fundamental right is violated.²⁰

Moreover, the ECJ made two other most important holdings.²¹ First, it stated that:

The second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 and Article 4(2) and (3) TEU, with Article 267 TFEU and with the principle of the primacy of EU law, must be interpreted as precluding national rules or a national practice under which the ordinary courts of a Member State have no jurisdiction to examine the compatibility with EU law of national legislation which the constitutional court of that Member State has found to be consistent with a national constitutional provision that requires compliance with the principle of the primacy of EU law.²²

Second, it further held that:

The second subparagraph of Article 19(1) TEU, read in conjunction with Article 2 and Article 4(2) and (3) TEU, with Article 267 TFEU and with the principle of the primacy of EU law, must be interpreted as precluding national rules or a national practice under which a national judge may incur disciplinary liability on the ground that he or she has applied EU law, as interpreted by the Court, thereby departing from case-law of the constitutional court of the Member State concerned that is incompatible with the principle of the primacy of EU law.²³

In short, the ECJ held that (i) member state judges may not follow a decision of their Constitutional Court in the event the same is not compliant with EU Law; and (ii) if a member state judge does not follow a decision of their Constitutional

17. See generally E.U. Directive 89/391/EEC of 12 June 1989 on the Introduction of Measures to Encourage Improvements in the Safety and Health of Workers at Work, EUR-LEX, <https://perma.cc/75MM-C3E3> (last visited Apr. 12, 2025).

18. See *id.* ¶ 33; see also Council Directive 89/391/CEE art.1, 1989 O.J. (L 183), <https://perma.cc/P9HV-Q7M8>.

19. See Case C-792/22, *supra* note 12.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

Court contrary to EU Law, he/she must not be subject to disciplinary proceeding for doing so.²⁴

With this decision, the ECJ took another important step towards its ultimate goal of having a uniform interpretation and application of EU law throughout the entire EU.²⁵ But the Romanian courts have not fully accepted the ECJ's argument, even though the Romanian Constitutional Court did not oppose the ECJ's ruling on the substance of the case in C-430/21.²⁶ In its interpretative Decision 37/2024 of 18 June 2024, responding to Case C-107/23 PPU *Lin*²⁷, the Romanian High Court of Cassation and Justice decided that Romanian national law relating to criminal liability would be trumped by EU Law where human rights and fundamental freedoms would thereby receive a lower protection in EU Law than from the legal regime of the European Convention of Human Rights (ECHR) and jurisprudence of the European Court of Human Rights (ECtHR).²⁸ This ruling had the effect of shoring up the Constitutional Court's position in C-430/21 that the Constitutional Court was the final arbiter of a clash of international legal regimes with Romanian national law.²⁹

A. RECENT ECHR DEVELOPMENTS ON HUMAN RIGHTS AND CLIMATE CHANGE

On April 9, 2024, the European Court of Human Rights (ECtHR) issued a landmark ruling in *KlimaSeniorinnen v. Switzerland*, finding that Switzerland failed to comply with the ECHR because it did not take adequate steps to combat climate change.³⁰ The ECtHR relied on its longstanding jurisprudence in environmental cases to confirm for the first time that climate change can negatively impact human rights that are protected by the Convention.³¹ The Court's judgment also clarified the criteria needed to establish "victim status" for both individuals and associations in the climate change context.³²

The case began in 2016 when an association (KlimaSeniorinnen) made up of elderly Swiss women and five of its individual members brought claims against various Swiss agencies relating to their concerns that the increasing adverse effects of climate change disproportionately affected the health and lives of older women

24. *Id.*

25. Koen Lenaerts, *On Checks and Balances: The Rule of Law Within the EU*, 29 COLUM. J. EUR. L. 25, 25-31 (2023), <https://cjel.law.columbia.edu/files/2023/04/7.-lenaerts-special-issue-pro-of.pdf> [<https://perma.cc/ZX65-45WH>].

26. Dragoș Călin, *Romania: A Declaration of War from the High Court of Cassation and Justice Against the Court of Justice of the European Union*, OFF. BLOG OF UNIO-EU L. J. (July 27, 2024), <https://officialblogofunio.com> [<https://perma.cc/FB9H-EDCL>].

27. See generally Case C-321/16, C.I. et al. v. Statul Roman, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62023CA0107> [<https://perma.cc/74W7-APG3>].

28. See Călin, *supra* note 26.

29. See Lenaerts, *supra* note 25.

30. Verein KlimaSeniorinnen Schweiz et al. v. Switzerland, App. No. 53600/20, at 230 (Apr. 9, 2024), <https://hudoc.echr.coe.int/> [<https://perma.cc/LH6K-2RUH>].

31. See *id.* ¶¶ 435-36.

32. See *id.* ¶ 590.

such as themselves.³³ They requested that the government take all necessary measures to reduce greenhouse gas emissions and argued that Switzerland's current emissions reductions targets were insufficient.³⁴

After exhausting their administrative remedies in the national courts, the applicants brought their case to the ECtHR, arguing that the Swiss authorities failed to comply with their duties to protect under Article 2 (right to life) and Article 8 (right to respect for family and private life) of the ECHR.³⁵ In addition, the applicants claimed that the agencies' rejection of their claims on largely procedural grounds violated their rights under Article 6 and 13 of the ECHR.³⁶

To hear the claims on the merits, the ECtHR had to address whether the association and the individuals had the necessary victim status to bring their claims.³⁷ The court's previous cases considered only whether an applicant had standing to bring a claim in the context of a specific and identifiable source of environmental harm affecting a specific population, such as pollution from an industrial activity.³⁸ But the court had not previously addressed whether or how a claimant had the victim status necessary to bring a claim where the issue was the failure of the nation to take adequate steps to fight climate change.³⁹ The court recognized the need for a special approach in this situation since climate change is caused by a variety of sources within and outside the member state and its consequences are not limited to a specific geographic area.⁴⁰

After an extensive analysis, the court set out a new test for an individual to claim victim status under Article 34 of the Convention in this context. The applicant must show that: (1) they were exposed to the adverse effects of climate change at a high intensity and suffered significant adverse consequences; and (2) there is a pressing need to protect the applicant individually because there are not adequate measures in place to reduce harm.⁴¹ The court noted that these are exceptionally high criteria to meet and found none of the individual applicants met them as to Article 8.⁴²

The association fared better. The court also set out a new test for associational standing in cases where the applicant claims a member state failed to protect individuals against the adverse effects of climate change.⁴³ The association must: (1) be lawfully established in the member state or have standing there; (2) have a purpose of defending the human rights of its members; and (3) show that it is genuinely qualified to act on behalf of its members.⁴⁴ Notably, there is no requirement that

33. See *id.* ¶¶ 10–21.

34. See *id.* ¶¶ 22–23.

35. *Verein KlimaSeniorinnen Schweiz*, No. 53600/20, ¶¶ 22–23.

36. *Id.* ¶ 3.

37. See *id.* ¶¶ 305–06.

38. See *id.* ¶ 315.

39. *Id.* ¶ 292.

40. *Verein KlimaSeniorinnen Schweiz*, No. 53600/20, ¶¶ 22–23.

41. *Id.*

42. *Id.* ¶¶ 487, 535.

43. *Id.* ¶¶ 487–88.

44. *Id.* ¶ 502.

the association show that its individual members would themselves have met the victim status requirement.⁴⁵ The court found that KlimaSeniorinnen met the criteria and that its complaints on behalf of its members fell within Article 8.⁴⁶

In assessing a member state's obligations to address climate change in the context of Article 8, the court found that states have a positive obligation to put in place a legislative and administrative framework to provide effective protection to human health and life and to apply those in a timely and effective manner.⁴⁷ In addition, states must implement measures to substantially and progressively reduce their respective greenhouse gas emissions, including setting specific reduction targets.⁴⁸ But states have a wide margin of discretion in determining what measures to put in place as long as they act with due diligence and give consideration to competing interests.⁴⁹

Applying these criteria to the facts of the case, the court found by a vote of sixteen to one that Switzerland violated Article 8 because it failed to put in place effective mitigation measures and failed to implement the measures it did have to effectively combat climate change.⁵⁰ In particular, Switzerland failed to reduce emissions in accordance with its own targets and failed to modify the targets when new data showing a need to make additional reductions came to light.⁵¹ Having found violations of Article 8, the court found it unnecessary to examine the complaints under Article 2.⁵²

Turning to Article 6, the court also found that the association, but not the individuals, had established victim status to bring its claim that it was denied access to the courts.⁵³ Because the association's complaint was rejected by the administrative authority and two domestic courts without assessment of the merits, the court held also by a vote of sixteen to one that the association's right to access the courts was impaired and that a violation of Article 6 occurred.⁵⁴ In addition, the court emphasized the important role domestic courts play now and in the future in climate change litigation and the importance of access to justice in this area.⁵⁵ Because Article 13 is absorbed by the more stringent provisions in Article 6, the court rejected the applicants' claims under Article 13.⁵⁶

The ECtHR gives Switzerland a wide margin of appreciation in complying with its judgment and Switzerland must determine what measures it will undertake to

45. See *id.*

46. Verein KlimaSeniorinnen Schweiz, No. 53600/20, ¶¶ 22–23.

47. *Id.* ¶ 538.

48. *Id.* ¶¶ 548–550.

49. *Id.* ¶ 538.

50. *Id.* ¶ 555.

51. Verein KlimaSeniorinnen Schweiz, No. 53600/20, ¶¶ 22–23.

52. *Id.* ¶¶ 536–37.

53. *Id.* ¶¶ 623–24.

54. *Id.* ¶ 638.

55. *Id.*

56. *Id.* ¶ 644.

meet its obligations.⁵⁷ The Swiss government submitted its initial plan of action for complying with the judgment on October 8, 2024.⁵⁸ The Council of Europe's Committee of Ministers, which represents all forty-six member states, will oversee Switzerland's compliance.⁵⁹

Overall, the judgment in *KlimaSeniorinnen* has far-reaching implications.⁶⁰ While it did not create a new right to a healthy environment, it recognized that climate change can negatively impact human rights already protected by the Convention.⁶¹ Citizens and associations in the Council of Europe's forty-six member states can now use these standards to review their nations' climate policies and rely on this binding legal precedent to bring actions in domestic courts if states are failing to adequately combat climate change.⁶²

B. UPDATE ON NEW 2024 BUSINESS OWNERSHIP REPORTING REQUIREMENTS FOR INTERNATIONAL ENTITIES UNDER THE U.S. CORPORATE TRANSPARENCY ACT

The Corporate Transparency Act (CTA)⁶³ has introduced new reporting requirements of disclosures of beneficial ownership information (BOI), with the Financial Crimes Enforcement Network (FinCEN) for all legal entities doing business in the United States, including European entities.⁶⁴ These changes come as the U.S. government seeks to enhance corporate transparency and curb illicit financial activities facilitated through anonymous shell companies.⁶⁵ This rule applies to approximately 32.6 million existing reporting companies plus the approximately five million new entities formed each year.⁶⁶

Unless exempted, virtually every businessperson (and not just an owner) would be responsible as a "Beneficial Owner" for disclosures, regardless of whether the company is a startup, family-owned business, high-growth business or multinational enterprise.⁶⁷ Founders, incorporators, entrepreneurs, investors, shareholders, owners, directors, officers, managers, trustees, and others filing official documents are at risk of personal liability.⁶⁸

57. See EUR. COM. MIN., *Action Report*, 1514th Sess., Doc. No. 1123 (Dec. 2024) (Eur.), <https://rm.coe.int/0900001680b1ddd9> [<https://perma.cc/CHQ8-L5ZB>].

58. *Id.*

59. *Id.*

60. *Verein KlimaSeniorinnen Schweiz*, No. 53600/20, at 230.

61. See *id.*

62. See *id.*

63. William M. (Mac) Thornberry *National Defense Authorization Act for Fiscal Year 2021*, H.R. 6395, 116th Cong. (2020) § 6401, https://www.fincen.gov/sites/default/files/shared/Corporate_Transparency_Act.pdf [<https://perma.cc/TF2U-UZ5M>].

64. *Id.*

65. *Id.*

66. FinCEN *Beneficial Ownership Information Reporting Requirements*, 87 Fed. Reg. 59498, 59549 (Sept. 30, 2022) (to be codified at 31 C.F.R. pt. 1010).

67. H.R. 6395, *supra* note 63.

68. *Id.*

C. HOT UPDATE: PRELIMINARY NATIONWIDE INJUNCTION

Enforcement of the CTA has been stayed under a temporary nationwide injunction issued on December 5, 2024, by the U.S. District Court for the Eastern District of Texas.⁶⁹ The Court considered arguments of unconstitutionality:

- (1) The Commerce Clause does not allow Congress to “dictate the conduct of an individual today because of prophesied future activity” that might become “interstate commerce.”⁷⁰
- (2) Congress lacks the power to govern incorporation under state law.⁷¹
- (3) CTA imposes burdens and costs on the States for compliance, without funding such costs, thereby arrogating services without paying.⁷²

But this is only a preliminary nationwide injunction, suspending any CTA penalties that might be due on or after January 1, 2025.⁷³ Focusing on the Commerce Clause and the Necessary and Proper Clause, the Texas court did not rule the CTA violates the Constitution or other law.⁷⁴ The Court stated, “the CTA appears likely unconstitutional” and “[t]hus, the Federal Government is not equipped with a federal police power to regulate all aspects of public life.”⁷⁵

The Texas Court ruled that the four elements required for a preliminary injunction were satisfied, namely a substantial likelihood of success on the merits; a substantial threat that they will suffer irreparable harm absent injunctive relief; that the threatened injury outweighs any damage that the injunction might cause the defendant; and that the injunction will not harm the public interest.⁷⁶

The Texas temporary nationwide injunction follows a decision on March 1, 2024, by the Alabama U.S. District Court, which held the CTA unconstitutional (but did not issue a nationwide injunction).⁷⁷ These decisions have paved the way for further challenges to the CTA up to the Supreme Court.⁷⁸ On December 23, 2024, the Fifth Circuit sustained the Texas district court’s preliminary injunction enjoining enforcement of the CTA and the Reporting Rule.⁷⁹ On January 3, 2025, U.S. Supreme Court Justice Samuel Alito, who handles Fifth Circuit matters,

69. *Texas Top Cop Shop, Inc. v. Garland*, No. 4:24-CV-478, 2024 WL 5049220, at *37–38 (E.D. Tex. 2024).

70. *Id.* at *21.

71. Brief for the State of Texas as Amicus Curiae Supporting Plaintiffs, *Texas Top Cop Shop, Inc. v. Garland*, No. 4:24-CV-478, 2024 WL 5049220, at *7 (E.D. Tex. 2024).

72. *Id.*

73. *Texas Top Cop Shop, Inc.*, No. 4:24-CV-478, 2024 WL 5049220, at *37.

74. *Id.*

75. *Id.* at *16, *37.

76. *Id.* at *36.

77. See *Natl. Small Bus. United v. Yellen*, 721 F. Supp. 3d 1260, 1289 (N.D. Ala. 2024).

78. See *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792, 2024 WL 5203138, at *3 (5th Cir. 2024).

79. *Id.*

reportedly set a deadline of January 10, 2025, for the Texas plaintiffs to submit their responsive pleadings to FinCEN's motion to dismiss.⁸⁰

Therefore, as of this writing on January 8, 2025, the CTA is not enforceable for the moment, so reporting companies are not required to file BOI reports and are not subject to liability under the CTA.⁸¹ The issue will be decided at the U.S. Supreme Court.⁸²

This temporary reprieve offers a window of opportunity.⁸³ Prudent business owners, managers, directors, officers, trustees and their professional advisors now have some time to collect all relevant BOI information and prepare for the reinstatement of a BOIR requirement in the near future, possibly with little notice.⁸⁴ Those who opt to delay their BOI filings as of January 1, 2025, should closely monitor developments regarding the BOI reporting requirements to avoid being caught off guard when or if the injunction is lifted.⁸⁵

D. CTA PROVISIONS

Anticipating that the Supreme Court may validate the CTA, the following is an overview of the key components of the CTA (on hold pending resolution of the Texas injunction) and its impact on an existing business or upcoming project of setting up in the United States. Compliance has been suspended pending resolution of the Texas litigation but remains an option if one wishes to comply despite the injunction.⁸⁶

1. *Original Timelines for Compliance*

Due to the nationwide injunction from the Fifth Circuit and FinCEN's appeal to the Supreme Court, the timelines for compliance have passed the deadlines originally set by FinCEN.⁸⁷

- Existing Companies: Entities created or registered in the United States before January 1, 2024, have until January 1, 2025, to comply with the CTA by filing their initial report.⁸⁸

80. See *FincenFetch Update: Supreme Court Advances CTA Case, Sets Deadline for Response*, CISION (Jan. 4, 2025, 7:35 AM), <https://www.prweb.com/releases/fincenfetch-update-supreme-court-advances-cta-case-sets-deadline-for-response-302342246.html> [<https://perma.cc/M9D7-XYME>].

81. *Id.*

82. *Id.*

83. H.R. 6395, *supra* note 63.

84. *Id.*

85. *Id.*

86. See Jonathan F.X. O'Brien, *Client Alert: Corporate Transparency Act Reporting Continues to be Suspended*, NAT'L L. R. (Jan. 21, 2025), <https://natlawreview.com/article/client-alert-corporate-transparency-act-reporting-continues-be-suspended> [<https://perma.cc/9R3D-PRWF>].

87. See Shay Dvoretzky et al., *After Nationwide Injunction of Corporate Transparency Act, FinCEN Suspends Reporting Requirements as Four Circuits Grapple with Act's Constitutionality*, SKADDEN (Dec. 13, 2024), <https://www.skadden.com/insights/publications/2024/12/after-nationwide-injunction-of-corporate-transparency-act-fincen-suspends-reporting> [<https://perma.cc/8VD2-GWAL>].

88. *Id.*

- New Companies: Entities created or registered on or after January 1, 2024, will have to file their initial report within ninety days of creation or registration in the United States.⁸⁹
- Companies created or registered as of January 1, 2025, will have to file their initial report within thirty days of creation or registration in the United States.⁹⁰

2. *Who Must File?*

Domestic companies and foreign companies (Reporting Companies) must file reports with FinCEN.⁹¹ Generally, a domestic reporting company is any corporation, Limited Liability Company or other entity (including a trust) that is created by the filing of a document with a secretary of state or Indian tribe.⁹² A foreign reporting company is any entity formed under the law of a foreign jurisdiction that is registered to do business within the United States.⁹³

3. *Exemptions*

Exemptions include banks, securities brokers and dealers, investment advisors, tax-exempt entities, accounting firms, and large operating companies with more than twenty employees, annual receipts over \$5 million, and an operating presence at a physical office within the United States.⁹⁴

4. *Beneficial Ownership Reporting*

Reporting Companies have to disclose information about their beneficial owners—individuals who exercise “substantial control” (directly or indirectly) over the company or own or control at least twenty-five percent ownership interest in said company.⁹⁵ Criteria for “substantial control” include serving as a senior officer, exercising authority over senior officers or a majority of the board, having significant influence over company decisions, and any other forms of substantial control.⁹⁶

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. See Dvoretzky, *supra* note 87.

94. Sandra Feldman, *The 23 Exemptions from the Corporate Transparency Act's Beneficial Ownership Information Reporting Requirement*, WOLTERS KLUWER (Apr. 10, 2024), <https://www.wolterskluwer.com/en/solutions/ct-corporation/beneficial-ownership-information> [<https://perma.cc/VH4D-K3DA>].

95. U.S. DEP'T OF THE TREASURY FINANCIAL CRIMES ENFORCEMENT NETWORK, BENEFICIAL OWNERSHIP INFORMATION FREQUENTLY ASKED QUESTIONS 17 (2025), <https://www.fincen.gov/sites/default/files/shared/BOI-FAQs-QA-508C.pdf> [<https://perma.cc/5LNW-8SVZ>].

96. *Id.* at 18.

5. *Information to be Disclosed*

Reporting Companies will have to provide information about both the company itself and each individual who is a beneficial owner of the company.⁹⁷

- Company Information: Full legal name, any trade or d/b/a name, address of the principal place of business in the United States, jurisdiction of formation, and federal taxpayer ID number.⁹⁸
- Beneficial Owner Information: The individual's legal name, date of birth, residential address, unique identifying number (from a U.S. or non-expired foreign passport), and a copy of this document.⁹⁹

Reporting companies formed or registered to do business in the United States after January 1, 2024, must provide the abovementioned information as well as each company applicant.¹⁰⁰ Note that some individuals are covered as a “company applicant,” even if not a “beneficial owner.”¹⁰¹ These are the persons who directly file the document that creates/registers the company, and the person who is primarily responsible for directing or controlling the filing if there is more than one person involved in the filing.¹⁰² For instance, this means the attorney or the individual responsible for the drafting of the incorporation or registration document and the individual at a corporate service provider who files the document with the secretary of state.¹⁰³

6. *Sanctions*

Penalties for simple non-compliance include civil fines of \$500 per day of non-compliance and criminal penalties of up to a \$10,000 fine or two years in jail.¹⁰⁴

A knowing and unauthorized disclosure or use of beneficial ownership information by “any person” is punishable by a \$500 per day civil penalty, along with a \$250,000 fine and five years in federal prison.¹⁰⁵

A knowing and unauthorized use or disclosure of beneficial ownership information while violating another federal law “or as part of a pattern of any illegal activity involving more than \$100,000 in a twelve-month period” by “any person” is punishable with a \$500,000 fine and ten years in federal prison.¹⁰⁶

97. *Id.* at 33.

98. *Id.* at 34.

99. *Id.*

100. See BENEFICIAL OWNERSHIP INFORMATION FREQUENTLY ASKED QUESTIONS, *supra* note 95, at 30.

101. See *id.* at 28.

102. See *id.*

103. Johnathan B. Wilson, *Who is a Company Applicant?*, FINCEN REPORT, <https://fincen-report.com/blog/company-applicant> [<https://perma.cc/TS5H-D2MS>] (last visited Apr. 30, 2025).

104. 31 U.S.C. §§ 5336(h)(3)(A)(i)–(ii).

105. 31 U.S.C. §§ 5336(h)(3)(B)(i)–(ii)(I).

106. 31 U.S.C. § 5336(h)(3)(B)(ii)(II).

7. *Practical Information*

Reports are to be submitted primarily electronically through a FinCEN portal at the following URL: <https://www.fincen.gov/boi>. On that portal is a “Small Entity Compliance Guide.”¹⁰⁷ FinCEN created an ID system to streamline reporting requirements.¹⁰⁸ Any reporting company, beneficial ownership, or company applicant may obtain a FinCEN ID for use of beneficial ownership reporting in lieu of reporting data points.¹⁰⁹

8. *Who Can Access the BOI Information Reported?*

The CTA imposes strict confidentiality, security, and access restrictions on the data.¹¹⁰ FinCEN is authorized to disclose reportable BOI to a statutorily defined group of domestic and foreign governmental authorities and financial institutions, in limited circumstances such as for national security, intelligence, or law enforcement activity, or as part of a criminal or civil investigation or for foreign law enforcement in specified circumstances.¹¹¹

9. *What to do Now?*

- Obtain a FinCEN ID number.¹¹² This is optional and available to Beneficial Owners.¹¹³ It is a distinct filing from the BOI reporting one.¹¹⁴ This allows individuals to be Beneficial Owners of multiple U.S. entities to facilitate filings.¹¹⁵
- Prepare and gather all information to be disclosed in an initial filing during 2024, or within ninety days of the 2024 formation, incorporation or

107. *Beneficial Ownership Information*, U.S. DEP’T OF TREASURY FIN. CRIMES ENFORCEMENT NETWORK, <https://www.fincen.gov/boi> [<https://perma.cc/YC4X-WDKA>] (last visited Apr. 2, 2025).

108. *Id.*

109. *Welcome to the FinCEN ID Application for Individuals*, FIN. CRIMES ENFORCEMENT NETWORK, <https://fincenid.fincen.gov/landing> [<https://perma.cc/9UQS-A58X>] (last visited Apr. 2, 2025).

110. *Fact Sheet: Beneficial Ownership Information Access and Safeguards Final Rule*, U.S. DEP’T OF THE TREASURY FIN. CRIMES ENFORCEMENT NETWORK, <https://www.fincen.gov/news/news-releases/fact-sheet-beneficial-ownership-information-access-and-safeguards-final-rule> [<https://perma.cc/E8RS-PCQP>] (last visited Apr. 2, 2025).

111. *See id.*

112. *Beneficial Ownership Reporting Guide: What is a FinCEN ID and How Do You Get One—A Quick Guide*, HARBOR COMPLIANCE, <https://www.harborcompliance.com/what-is-a-fincen-id#> [<https://perma.cc/8C88-RHP8>].

113. FIN. CRIMES ENFORCEMENT NETWORK, *supra* note 109.

114. *See* HARBOR COMPLIANCE, *supra* note 112.

115. *See id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

EUROPEAN LAW 287

creation of a U.S. entity.¹¹⁶ Last-minute filings could swamp FinCEN's computers, according to some observers.¹¹⁷

- Investment projects in the United States, including corporate filings or registration of a foreign entity in 2024 or in 2025 are to be considered within the requirements and constraints of the CTA.¹¹⁸

The CTA is complex and contains many nuances.¹¹⁹ Reporting Companies and Beneficial Owners should consult an attorney now and also when establishing (or changing control of) a U.S. legal entity.¹²⁰ While attorneys can advise and assist, each Reporting Company is responsible for the filings and updating of the reported information with FinCEN.¹²¹

116. *The CTA Filing Deadline Is Fast Approaching with Signs of Last-Minute Rush*, DUANE MORRIS (Oct. 15, 2024), https://www.duanemorris.com/alerts/cta_filing_deadline_fast_approaching_signs_last_minute_rush_1024.html [<https://perma.cc/PM4Y-E2AT>].

117. *See id.*

118. Holli Heiles Pandol, *How the Corporate Transparency Act Impacts Private Funds*, CARTA (Jan. 24, 2025), <https://carta.com/learn/private-funds/regulations/corporate-transparency-act> [<https://perma.cc/U6LX-QFE7>].

119. Miranda Fraraccio, *What Every Small Business Needs to Know About the Corporate Transparency Act*, U.S. CHAMBER OF COM. (Mar. 27, 2025), <https://www.uschamber.com/co/start/strategy/small-business-corporate-transparency-act#> [<https://perma.cc/JQ2G-X66T>].

120. *See id.*

121. *See id.*

THE YEAR IN REVIEW
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Middle East

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This Article discusses significant legal developments in law in the Middle East during 2024.

I. Iran

The U.S. Department of Treasury issued a press release announcing the sanctioning of Masoud Jalili and other Islamic Revolutionary Guard Corps agents (IRGC) for allegedly tampering with the 2024 U.S. presidential election.¹ Executive Order (E.O.) 13848 signed into effect on September 12, 2018,² gives these sanctions force.

As such pursuant to E.O. 13848, these sanctions put into effect the following restrictions:

- All properties and interests in properties that are in the United States, that arrived in the United States after this E.O. was signed into effect, or that are in the possession or control of any U.S. person, such properties or interest in properties may not be returned, transferred, paid, exported, withdrawn or otherwise dealt in;

* Kelly Blount is editor of this chapter and a former co-chair of the Middle East Committee. Harry Baumgarten (Israel) previously served as Legislative Director and Counsel to Members of Congress where he advised on legal developments in the Middle East. His writings on foreign policy, economics, and governance have appeared in the Hill, Slate, the Philadelphia Inquirer, and other publications. He is a Member of the ABA's House of Delegates and a Term Member of the Council on Foreign Relations. Hani Jawabrah (Palestine) is a JD Candidate at Rutgers Law focusing on international law with a specialization in the Middle East. Michael Kene (Iran) is an aspiring law student with backgrounds in Philosophy and Theology. He explores a broad range of interests and is an avid sports enthusiast. Michael H Traison (Israel) has practiced commercial and business law and has been an active member of the ABA for over four decades and is a partner at Cullen and Dykman LLP in New York City with a national and international practice. Before engaging in the practice of law, Traison taught history for 15 years in Detroit and Canada. He is the executive vice president of the American Association of Jewish Lawyers and Judges and a member of the board of governors of the International Jewish Lawyers organization.

1. Press Release, U.S. Dep't of the Treasury, Treasury Sanctions Iranian Regime Agents to Interfere in U.S. Elections (Sept. 30, 1998).

2. See Exec. Order No. 13,848, 83 Fed. Reg. 46843 (Sept. 14, 2018).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

290 THE YEAR IN REVIEW

[VOL. 59]

- Any foreign person determined by the appropriate offices to have directly or indirectly facilitated, was or is complicit in the aforementioned act, or persons designated by this sanction to the end of the aforementioned act; or
- Any entity owned, controlled by, acted, or purported to have acted for or on behalf of directly or otherwise sanctioned person.³

The sanctions will also, if deemed necessary, block the actions of:

- Largest corporate entities in the country of the sanctioned persons;
- Transactions in a person's property and interests in property under U.S. jurisdictions;
- Issuance of an export license for the export or re-export of goods and services that require prior U.S. government review and approval;
- Providing loans or credits by U.S. financial institutions for a person;
- Foreign exchange transactions in which a person may have interest;
- Transfer of credit or payment between, by or through financial institutions for the benefit of a person;
- U.S. persons from investing in or purchasing equity or the debt of designated persons;
- Exclusion of alien persons' holding corporate offices in the United States;
- Alien persons' holding positions as principal executive officers;
- The making of donations for the benefit of designated persons, or receiving of donations from the same;
- Transactions that could evade or constitute a cause to evade or violate these prohibitions;
- Unrestricted immigrant or nonimmigrant entry into the United States of sanctioned persons is suspended; and
- Alleged conspiracies against these prohibitions.⁴

These prohibitions apply, even if the persons may have a legal right to be in the United States.⁵ Unless otherwise stated, the restrictions of E.O. 13848 apply retroactively.⁶

The Secretary of the Treasury, pursuant to E.O. 13848, holds discretionary authority to wield powers under the order as necessary, in consultation with other relevant offices.⁷ The above referenced restrictions were put into effect with the U.S. Department of the Treasury's press release.⁸

3. *Id.* at 46844.

4. *Id.* at 46845.

5. *Id.* at 46846.

6. *Id.* at 46845.

7. *Id.*

8. See Press Release, U.S. Dep't of the Treasury, *supra* note 1.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

MIDDLE EAST 291

A. SUGGESTED AMENDMENTS AND CLARIFICATIONS TO EXECUTIVE ORDER 13848

To avoid confusion and to enhance implementation, some points in E.O. 13848 may need to be clarified or amended. The points of potential contention requiring clarification include the following:

Acts which seem to purposely affect a sovereign nation's election infrastructure as stated in this E.O. could potentially constitute an act of war.⁹ Thus far, what allegedly transpired within the 2024 presidential election cycle was social engineering, geared towards influencing the election outcome.¹⁰ As a result, E.O. 13848 may require an amendment to include: (a) hacking, phishing, or cyber hack-and-leak actions, dissemination of misinformation, disinformation, or social propaganda or social engineering that could influence voter actions; and/or (b) any and all cyber activity geared towards influencing an election outcome.¹¹ Alternatively, the E.O. could be amended to either clarify or redefine election infrastructure.¹²

Also, a clarification or redefinition of terms for Section Six of the E.O. may be necessary, considering the E.O.'s use of the word "unrestricted," as referenced to immigrants and nonimmigrants to avoid vagueness.¹³ The Immigration and Nationality Act gives the President of the United States broad powers to restrict or suspend the entry of foreign nationals into the United States if their entry is inimical to national interests.¹⁴

The term "unrestricted," as used in E.O. 13848, refers to the potential for unfettered access across U.S. borders by designated persons, which does not seem to be the case at the ports of entry.¹⁵ Therefore, "unrestricted" will seem overly broad and vague, insofar as it does not define what constitutes "unrestricted . . . entry," hence for transparency and to avoid potential legal challenges based on vagueness, clarifications or amendments may be required, though the language is consistent with the intentions of section 212(f) of the Immigration and Nationality Act.¹⁶

9. See *Mil. and Paramilitary Activities in and Against Nicaragua (Nicar. V. U.S.)*, Judgment, 1986 I.C.J. Rep. 14, 81 (June 27); see also *Oil Platforms (Iran v. U.S.)*, Judgment, 2003 I.C.J. Rep. 161 (Nov. 6); see also MICHAEL N. SCHMITT, *TALLIN MANUAL ON THE INTERNATIONAL LAW APPLICABLE TO CYBER WARFARE* 58 (Cambridge University Press 2013).

10. Imposing Certain Sanctions in the Event of Foreign Interference in a United States Election, 83 Fed. Reg. at 46843.

11. *Id.*

12. *Id.*

13. *Id.*

14. See Immigration and Nationality Act, 8 U.S.C. § 1182(f) (1952).

15. Imposing Certain Sanctions in the Event of Foreign Interference in a United States Election, 83 Fed. Reg. at 46846.

16. See 8 U.S.C. § 1182(f); see also *supra* note 10.

II. Israel

This year in Israel was marked by continuing profound grief over the October 7, 2023, terrorist attack and the subsequent wars in Gaza and Lebanon.¹⁷ Yet, even amidst the intensified national security challenges, the Israeli government's contentious judicial reform initiative from the previous year remained a source of public concern and division.¹⁸ On January 1, 2024, the Israeli Supreme Court struck down the first measure in the Netanyahu-led government's judicial reform package.¹⁹ The invalidated provision would have amended Israel's basic law to prohibit the court from applying a reasonableness standard when reviewing administrative actions, including the appointment of ministers.²⁰ Other substantive changes to Israel's judiciary were expected to follow as part of the government's reform package, including a measure that would increase the government's ability to decide who sits on the Supreme Court.²¹

The Israeli Supreme Court held in a decision, for the first time ever, that it possesses the authority to strike down basic laws.²² The court affirmed, twelve-to-three, that it wielded such authority.²³ Furthermore, separate from the question of the Court's authority, the Court voted on a narrower eight-to-seven basis to strike down the law in question.²⁴ This holding was joined by both liberal and conservative judges on the court.²⁵ The court's decision was met with widespread attention and sparked intense debate across Israel, drawing reactions from political leaders, legal experts, and the international community.²⁶ While some viewed the ruling as a landmark in upholding judicial independence, others criticized it as overreach, reflecting deep divisions within Israeli society.²⁷

17. Jeremy M. Sharp, Jim Zanotti, *Israel and Hamas Conflict in Brief: Overview, U.S. Policy and Options for Congress*, CONGRESS.GOV (Oct. 4, 2024), <https://www.congress.gov/crs-product/R47828> [<https://perma.cc/X66U-7Y68>].

18. *Id.*

19. Isabel Kershner, et al., *Israel's Supreme Court Deals Blow to Netanyahu's Legal Overhaul*, N.Y. TIMES (Jan. 1, 2024), <https://www.nytimes.com/2024/01/01/world/middleeast/israel-supreme-court-netanyahu.html> [<https://perma.cc/EAA8-WT3R>].

20. Ruth Levush, *Israel: Legislation Abolishes Reasonableness as a Standard for Judicial Review of Government Decisions*, LIBR. OF CONG. (Oct. 25, 2023), <https://www.loc.gov/item/global-legal-monitor/2023-10-24/israel-legislation-abolishes-reasonableness-as-a-standard-for-judicial-review-of-governments-decisions/> [<https://perma.cc/NZ2U-HW3B>].

21. Tal Schneider, *Netanyahu Has Yet Another New Plan for Choosing Judges. It, Too, Is Highly Problematic*, TIMES OF ISRAEL (Oct. 1, 2023), <https://www.timesofisrael.com/netanyahu-has-yet-another-new-plan-for-choosing-judges-it-too-is-highly-problematic/> [<https://perma.cc/9N5L-X3ZH>].

22. HCJ 5658/23, *Movement for Quality Government v. Knesset* (2024) (Isr.).

23. *Id.*

24. *Id.*

25. *Id.*

26. Joanie Margulies, *Israeli Politicians React to High Court Ruling on Reasonableness Standard*, JERUSALEM POST (Jan. 1, 2024), <https://www.jpost.com/israel-news/politics-and-diplomacy/article-780355> [<https://perma.cc/6QPB-8MLR>].

27. *See id.*

III. Palestine

On July 19, 2024, the International Court of Justice (ICJ) released an advisory opinion regarding the legality of Israel's occupation of Palestine, including Gaza and East Jerusalem.²⁸ The General Assembly requested an opinion from the ICJ in 2022.²⁹ Many western jurists were upset when this advisory opinion was requested, arguing that the decision would make the two state solution harder to achieve because it would make Palestine less willing to cede territory to Israel.³⁰ Another argument advanced the idea that the advisory opinion would provide an opportunity for the Court (i) to weigh in on when and how occupations can become illegal; and (ii) emphasized that an advisory opinion would move the issue of Palestinian rights forward.³¹ Nevertheless, the ICJ considered the legal questions irrespective of the political consequences.³² The advisory opinion itself left many issues unsettled.³³ As a result, the opinion did not create a bright line rule for when an occupation becomes illegal.³⁴ The occupation of Palestine has been deemed illegal by the advisory opinion.³⁵ This declaration is of course a win for Palestinian rights, but the occupation of Palestine is particularly long and has been accompanied by well-documented violations of Palestinians' rights by the Court.³⁶ The occupation of the Palestinian territories is unique in human history, for its length and the accompanying violations; therefore, extracting a rule from the advisory opinion that can be applied in other instances might prove to be difficult. It remains to be seen whether the Court will ever deal with the missing issues raised by the opinion.

28. Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem, Advisory Opinion, 2024 I.C.J. 1, 1-2 (July 19) [hereinafter Legal Consequences Opinion].

29. *Id.* at 7.

30. See Tamer Morris, *The ICJ's Advisory Opinion on the Occupied Palestinian Territory*, LIEBER INST. (Sept. 3, 2024), <https://lieber.westpoint.edu/icjs-advisory-opinion-occupied-palestinian-territory/> [https://perma.cc/Y854-E7Z6], see also Orde F. Kitttr Bruce Rashkow, *The Pending Israel-Palestine ICJ Advisory Opinion: Threats to Legal Principles and Security*, LIEBER INST. (Aug. 24, 2023), <https://lieber.westpoint.edu/pending-israel-palestine-icj-advisory-opinion-threats-legal-principles-security/> [https://perma.cc/JW7A-R74D].

31. See Susan Power, *UN General Assembly Comm. Adopts Resol. Requesting Second Advisory Op. from ICJ on Occupied Palestinian Territory*, EJIL: TALK! (Dec. 20, 2022), <https://www.ejiltalk.org/un-general-assembly-committee-adopts-resolution-requesting-second-advisory-opinion-from-icj-on-occupied-palestinian-territory/> [https://perma.cc/68KH-U9P2].

32. See Legal Consequences Opinion, *supra* note 28, at 18.

33. See *id.*

34. *Id.* at 68-72.

35. *Id.* at 72.

36. See *id.* at 33-68.

A. MISSING ISSUES

The advisory opinion is a landmark ruling because it is the first case in which the ICJ has addressed whether an occupation is illegal.³⁷ Though the ICJ covered similar issues and incorporated the law established in the Chagos Islands and Namibia advisory opinions, these cases did not cover a belligerent occupation that resulted from a war.³⁸ Issues which the Palestinian advisory opinion did not address or was unclear about include the following: (i) the effects on the longevity of occupation as a factor in the occupation becoming illegal, (ii) the question of whether the occupation was illegal *ab initio*; and (iii) to what extent security concerns played into the Court's decision.³⁹

Concerning longevity, the Court addressed the role that the length of an occupation has on its legality.⁴⁰ The Court recalled, for instance, that an occupation must be temporary.⁴¹ But when looking at whether the occupation was temporary, the Court only considered evidence that Israel was annexing Palestine's territory in order to determine the nature of the occupation.⁴² An occupation is thus prolonged where the occupier behaves as a colonial enterprise.⁴³ But parameters in the advisory opinion for adjudging the length of an occupation particularly as to when it moves beyond a categorization as *temporary* remains unclear.⁴⁴

The Court also did not address whether the occupation was illegal *ab initio*.⁴⁵ Legal scholars have noted that an occupation born in violation of international law, must be considered illegal *ab initio*.⁴⁶ Despite the fact that many contend that the occupation of Palestine was illegal because the Six Day War in 1967 was an act of aggression,⁴⁷ the Court did not even touch on that issue.⁴⁸ Relitigating history might have been seen as *gauche* to the Court even though the Court previously

37. See Dylan Saba, *ICJ Opinion on Israeli Settlements, Explained*, FOREIGN POL'Y (Aug. 12, 2024), <https://foreignpolicy.com/2024/08/12/icj-israel-palestine-gaza-occupation-settlers/> [https://perma.cc/2VGS-65CL]; see also Yoram Dinstein, *INT'L L. BELLIGERENT OCCUPATION* (Cambridge University Press 2009).

38. Compare Legal Consequences for States of the Continued Presence of South Africa in Namibia (S.W. Afr.), Sec. Council Resol. 276 (1970), Advisory Op., 1971 I.C.J. 16 (June 21) (ruling that South Africa's hold on South West Africa was illegal, but South West Africa was never considered to be under belligerent occupation), with Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 2019 I.C.J. 95 (Feb. 21) (dealing with the lawful completion of decolonization).

39. See generally Legal Consequences Opinion, *supra* note 28.

40. *Id.* at 33-36.

41. *Id.* at 47.

42. *Id.*

43. *Id.* at 33-36.

44. *Id.* at 34.

45. See Legal Consequences Opinion, *supra* note 28.

46. See AL-HAQ & BRILL NIJHOFF, *PROLONGED OCCUPATION & INT'L L.: ISR. & PAL.* 30 (Nada Kiswanson & Susan Power eds., 2023).

47. *Id.*

48. See Legal Consequences Opinion, *supra* note 28.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

MIDDLE EAST 295

reconsidered issues from older historical disputes in other opinions.⁴⁹ The Palestinian advisory opinion represents a missed opportunity for the Court to provide clarity for the international community in the area of the law of territorial occupation by a foreign state.⁵⁰

Finally, the Court wrote very little on security implications and threats as a justification for Israel's actions.⁵¹ At most, the Court discussed security in passing and determined that Israel's security concerns were not relevant due to its annexation practices.⁵² This stance led commentators, and even other judges from the Court, to raise questions as to whether security concerns can even be raised as a defense for a prolonged occupation.⁵³

B. ENFORCEMENT

Advisory opinions from the ICJ are not binding on States,⁵⁴ however because they reflect the Court's interpretation of international law, they can inspire states to follow their recommendations.⁵⁵ The Court recommended, *inter alia*, that States must distinguish the Occupied Palestinian Territory as being occupied and that all economic dealings with settlements should be prohibited.⁵⁶ In light of Israel's refusal to follow international law and the changes it forced upon the Occupied Palestinian Territory via its hamstringing of the United Nations Relief and Works Agency for Palestine Refugees, States called for Israel to be expelled from the UN General Assembly.⁵⁷ Around the world, courts have begun to allow Court cases against persons or entities engaged in activities related to the illegal occupation.⁵⁸ For example, in Canada the Jewish National Fund, which is heavily involved in Israeli settlements, lost its charity status.⁵⁹

49. See *The Minquiers and Ecrehos Case* (France/United Kingdom), Judgment, 1953 I.C.J. 47 (Nov. 17) (dealing with issues about title being claimed since 1066).

50. See Saba, *supra* note 37.

51. See Legal Consequence Opinion, *supra* note 28, at 20.

52. *Id.* at 59.

53. *Id.* at 22.

54. Statute of the Int'l Ct. of Just., Art. 59, ¶ 1.

55. *Id.*

56. See Legal Consequences Opinion, *supra* note 28, at 76.

57. Anadolu staff, *Malaysia Backs Expelling Israel from UN*, ANADOLU AJANSI (Nov. 4, 2024), <https://www.aa.com.tr/en/asia-pacific/malaysia-backs-expelling-israel-from-un/3383736#> [<https://perma.cc/8PFM-YCBA>].

58. *Experts Hail ICJ Declaration on Illegality of Israel's Presence in the Occupied Palestinian Territory as "Historic" for Palestinians and Int'l L.*, UN HUM. RTS. (July 30, 2024), <https://www.ohchr.org/en/press-releases/2024/07/experts-hail-icj-declaration-illegality-israels-presence-occupied> [<https://perma.cc/4G8A-33VN>].

59. Middle East Eye Staff, *Jewish Nat'l Fund of Canada Loses Ct. Appeal to Regain Charitable Status*, MIDDLE EAST EYE (Nov. 10, 2024), <https://www.middleeasteye.net/news/jewish-national-fund-canada-loses-court-appeal-regain-charitable-status#:~:text=The%20Jewish%20National%20Fund%20of,military%20occupation%20of%20Palestinian%20land> [<https://perma.cc/JVA3-5QUA>].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

296 THE YEAR IN REVIEW

[VOL. 59]

States themselves have gotten involved in sanctioning Israeli settlers and settler groups as a result of this decision.⁶⁰ The United States joined in on these sanctions in part sanctioning settler groups such as “Hilltop Youth,” who committed arson attacks against Palestinians in the West Bank.⁶¹ More recently, the United States went so far as to target organizations with ties to violent actors in the West Bank.⁶²

60. *Japan Imposes Sanctions on Israeli Settlers in the West Bank for 1st Time*, KYODO NEWS (July 23, 2024), <https://english.kyodonews.net/news/2024/07/73d932dde89b-japan-imposes-sanctions-on-israeli-settlers-in-west-bank-for-1st-time.html> [<https://perma.cc/V3EV-NWVL>].

61. Fatime Hussein, *US Sanctions Extremist West Bank Settler Group for Violence Against Palestinians*, AP NEWS (Oct. 1, 2024), <https://apnews.com/article/hilltop-youth-sanctions-israel-gaza-settler-treasury-west-bank-extremist-53fb26077c8d88637b4bd366ad3343cb> [<https://perma.cc/E7UR-FE4W>].

62. Press Release, U.S. Dep’t of the Treasury, *Treasury Targets Org. with Ties to Violent Actors in the West Bank* (Nov. 18, 2024), <https://home.treasury.gov/news/press-releases/jy2715> [<https://perma.cc/WYP5-WZDH>].

International Finance & Securities

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This article highlights significant legal developments relevant to International Finance & Securities that took place in 2024.

I. EU Listing Act and Equity Financing

On October 8, 2024, the European Council approved the Listing Act, which contains directives and regulations amending Regulation (EU) 2017/1129 (Prospectus Regulation), Regulation (EU) 596/2014 (Market Abuse Regulation), Regulation (EU) 600/2014 (MiFIR), and Directive 2014/65/EU (MiFID II).¹ Additionally, the Listing Act includes a new directive on multiple-vote share structures.² The Listing Act is part of the larger EU initiative, the Capital Markets Union, which aims to develop and unify the capital markets in the EU, creating a single market for capital.³ On December 4, 2024, the EU Listing Act will enter into effect, with some of the changes being phased in later, on March 5, 2026 and June 5, 2026.⁴

Key components of the Listing Act are the new prospectus exemptions and other amendments of the current prospectus regime in the EU, which aim to make it easier for listed companies to raise equity via both rights issues and accelerated bookbuilding offerings.⁵

The broadened prospectus exemptions will be applicable from December 4, 2024, onwards, while the new follow-on prospectus will be available from March 5,

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1. See generally Council Regulation 2024/2809, 2024 O.J. (L 2809) (EU) [hereinafter Listing Act Regulation]; see also Council Directive 2024/2811, arts. 1–5, 2024 O.J. (L series) (EU).

2. See generally Council Directive 2024/2810, arts. 1–9, 2024 O.J. (L series) (EU).

3. 2021 Capital Markets Unions Package, EUR. COUNCIL, <https://www.consilium.europa.eu/en/policies/what-the-eu-is-doing-to-deepen-its-capital-markets/> [https://perma.cc/MDH9-YR3E] (last visited Apr. 1, 2025).

4. Listing Act Regulation, *supra* note 1, at art. 4.

5. See *id.* art. 1.

2026, and the increased threshold (€12 million) for public offerings without a prospectus from June 5, 2026.⁶

A. RIGHTS ISSUES

In the current prospectus regime, a full prospectus or a simplified prospectus is generally required in connection with a rights issue.⁷ Alternatively, public offerings, including rights issues, below €8 million (or a lower threshold set by a member state) can be executed without publishing a prospectus, if a relevant exemption from publishing a prospectus in connection with the listing of such shares is also available to the issuer.⁸ But member states have the power to impose other disclosure requirements, if the €8 million exemption is relied upon.⁹ For example, in Finland, a seven-page basic information document must be published in connection with such exempt offering.¹⁰ The Listing Act Regulation increases the €8 million threshold to €12 million from June 5, 2026, onwards, but member states will have the option to adopt the € five million threshold instead of the €12 million threshold.¹¹

In general, issuers in the EU have “viewed this regime as somewhat burdensome, which probably reduced the popularity of rights issues, especially in comparison with accelerated book-building offerings, for example.”¹² The disclosure requirements in the simplified prospectus have been perceived as too stringent, failing to provide the level of ease and accessibility intended for seasoned issuers.¹³ The most important changes related to rights issues brought about by the Listing Act Regulation are introduced below.

1. *Exemption Document*

With the new prospectus exemptions introduced by the Listing Act Regulation, companies may choose to publish an eleven-page exemption document instead of a prospectus.¹⁴ The exemption document is available if: (i) the shares to be issued represent, over a period of twelve months, less than thirty percent of the number of shares already admitted to trading;¹⁵ or (ii) the issuer’s shares have been

6. See *id.* art. 4.

7. Council Regulation 2017/1129 of June 14, 2017, On the Prospectus to be Published When Securities Are Offered to the Public or Admitted to Trading on a Regulated Market & Repealing Directive, art. 3, 14, 2017 O.J. (L 168) (EU).

8. See *id.* art. 3(2).

9. See *id.* ¶ 13.

10. See generally 1281/2018 Valtiovarainministeriön asetus arvopaperimarkkinalain 3 luvun 2 §:ssä tarkoitetusta perustietosiakirjasta [Ministry of Finance Decree the Key Information Document Referred to in Ch. 3, § 2 of the Securities Markets Act] (Fin.).

11. Listing Act Regulation, *supra* note 1, at ¶ 8, art. 1(3).

12. Juha Koponen et al., *New EU Listing Act Brings Changes and Alleviations to Secondary Issues, IPOs and Market Abuse Regulation*, BORENIUS (Dec. 18, 2024), <https://www.borenium.com/legal-alerts/2024/12/18/new-eu-listing-act-brings-changes-and-alleviations-to-secondary-issues-ipos-and-market-abuse-regulation/> [https://perma.cc/8ZNL-DVFE].

13. Listing Act Regulation, *supra* note 1, at ¶ 27.

14. See *id.* art. 1(1)(b)(i)(da).

15. *Id.*

“admitted to trading on a regulated market or an SME growth market continuously for at least the eighteen months preceding the rights issue.”¹⁶ In addition, the issuer may not be “subject to a restructuring or to insolvency proceedings.”¹⁷

The exemption document is not subject to the national competent authority’s approval or review and may therefore be drafted and published relatively quickly.¹⁸ The document may not exceed eleven pages, and it must include a responsibility statement, the reason for the issuance and use of proceeds, the risk factors specific to the issuer, the characteristics of the securities, the dilution and shareholding after the issuance, a statement of continuous compliance with reporting, and disclosure obligations throughout the period of being admitted to trading, as well as certain general information.¹⁹

2. *Follow-on Prospectus*

The EU Listing Act also introduces a new follow-on prospectus for seasoned issuers, that is, issuers whose securities have been traded on a regulated market or SME growth market continuously for at least eighteen months.²⁰ The follow-on prospectus will be available to issuers from March 5, 2026, and may be used, among other use cases, in connection with rights issues.²¹ The follow-on prospectus replaces the simplified prospectus available in the current regime and is essentially an even more simplified version of the previous simplified prospectus.²²

The follow-on prospectus may not exceed 50 A4-sized pages (not including the summary) and requires the inclusion of only one year of financial information.²³ In comparison, a simplified rights issue prospectus in the current prospectus regime often exceeds 100 A4-sized pages.²⁴

3. *Navigating the New Prospectus Regime*

The changes described above aim to reduce administrative burdens and make capital raising more accessible, particularly for seasoned companies. Importantly, both the exemption document and follow-on prospectus provide alternatives for issuers.²⁵ While a full prospectus may in some instances be justified from a commercial and liability standpoint, a lighter and faster process should be welcome for smaller issuances.²⁶

16. *Id.* art. 1(1)(b)(i)(db).

17. *Id.* art. 1(1)(b)(i)(db)(ii).

18. See Listing Act Regulation, *supra* note 1, at ¶¶ 8–9.

19. See *id.* annex IX.

20. *Id.* art. 1(12)(1).

21. *Id.* art. 1(12)(8).

22. See *id.*

23. See *id.* art. 1(12)(5), annex IV(V).

24. See Listing Act Regulation, *supra* note 1, at art. 1(12); Prospectus Regulation, Council Regulation 2017/1129, art. 14.

25. Listing Act Regulation, *supra* note 1, at arts. 1(3)–1(4), 1(12).

26. See *id.* ¶ 7.

The comprehensive nature of a prospectus, while making it time-consuming to publish, provides assurance and transparency. The process of publishing a prospectus often requires a comfort process with an auditor and a disclosure opinion from a legal advisor.²⁷ The process provides a safeguard for all parties involved, making it unlikely that an eleven-page document will completely displace a prospectus.²⁸ Further, larger investments may require a certain level of disclosure and due diligence in connection with rights issues, in which case the exemption document will not be an ideal alternative.²⁹ The issuers may consider combining a separate event such as a capital markets day with the lighter disclosure regime in order to provide a full picture of the issuer.³⁰ As before, a prospectus or an exemption document cannot contain any material with undisclosed information on the issuer.³¹

Considering the above, the follow-on prospectus may just strike a perfect balance between a full prospectus and the eleven-page exemption document.³² With the national competent authority's review, comfort process and disclosure opinions, the follow-on prospectus materially corresponds to a full prospectus while allowing for certain alleviations³³

B. ACCELERATED BOOKBUILDING OFFERINGS

Accelerated bookbuilding offerings (ABBs) will also benefit from the new prospectus exemptions.³⁴ The Listing Act Regulation increases the current twenty percent threshold on the prospectus-exempted accelerated bookbuilding offerings on a regulated market to thirty percent.³⁵ This means that an issuer does not need to publish a prospectus when listing additional shares, provided that they represent, over a period of twelve months, less than thirty percent of the number of shares already admitted to trading.³⁶ This also requires that shares are offered solely to qualified investors, or that another prospectus exemption regarding the offering of securities is available.³⁷

In addition, the new eleven-page exemption document may be used in connection with an ABB.³⁸ As the exemption document does not require the national competent authority's review, it may be drafted and published quickly in connection with an ABB where the shares represent over thirty percent of the number of shares already admitted to trading.³⁹

27. Council Regulation 2017/1129, ¶¶ 3, 5.

28. See Listing Act Regulation, *supra* note 1, at art. 1(1)(b)(iv).

29. See *id.* annex IV(XV).

30. See *id.* annex IV(V).

31. See *id.* annex IV(V)(III)(A).

32. See *id.* art. 1(b)(iv).

33. *Id.* art. 2(17)(c).

34. Koponen et al., *supra* note 12.

35. *Id.*; see Listing Act Regulation, art. 1(1)(b)(i)(da)(i).

36. Koponen et al., *supra* note 12; see Listing Act Regulation, *supra* note 1, at art. 1(1)(c)(i)(1)(a).

37. Koponen et al., *supra* note 12; Commission Regulation 2024/2809, ¶ 11, 2024 O.J. (L 2024 2809) 1 (EU) [hereinafter EU Listing Act].

38. Koponen et al., *supra* note 12.

39. *Id.*; Listing Act Regulation, *supra* note 1, at ¶ 12.

Whether these eased requirements will result in larger ABBs remains to be seen. For example, in Finland, the First North Growth Market has not had the twenty percent threshold, and very rarely have we seen ABBs of over twenty percent. Further, there are other impediments to large, directed share issues; for example, the share issue authorizations or articles of association of a company may limit the size of a potential ABB in certain EU jurisdictions.⁴⁰

II. U.S. Climate-Related Disclosure Laws and Regulations: 2024 Developments

The year 2024 has been marked by the adoption of new sweeping legislation on corporate climate-related disclosures, and the litigation that immediately ensued.⁴¹

This section briefly summarizes: 1) the content of the climate-related disclosure obligations set forth in the U.S. Securities and Exchange Commission final rule and two California state laws issued in 2024 and 2) the legal arguments used by interested parties to challenge them, along with a status of the pending litigation.

It is worth noting that, although California is the first state to have formally enacted climate-related disclosure laws, additional states have introduced climate-related disclosure bills: New York,⁴² Minnesota,⁴³ Washington,⁴⁴ and Illinois.⁴⁵

A. SECURITIES AND EXCHANGE COMMISSION

Approximately two years after the issuance of a Proposed Rule in March 2022,⁴⁶ on March 6, 2024, the U.S. Securities and Exchange Commission (the SEC or the Commission) adopted the final version of *The Enhancement and Standardization of Climate-Related Disclosures for Investors*⁴⁷ (the Final Rule), effective May 28, 2024.

The Final Rule amends the SEC rules under the Securities Act of 1933⁴⁸ (the Securities Act) and Securities Exchange Act of 1934⁴⁹ (the Exchange Act) by

40. See *id.*

41. See S.B. S897C, 2023–2024 Reg. Sess. (N.Y. 2023); S.B. 5437, 2023–2024 Reg. Sess. (N.Y. 2023).

42. *Id.*

43. S.B. 2744, 93rd Leg., Reg. Sess. (Minn. 2023).

44. S.B. 6092, 68th Leg., Reg. Sess. (Wash. 2024).

45. H.B. 4268, 103rd Gen. Assemb., Reg. Sess. (Ill. 2024).

46. The Enhancement & Standardization of Climate-Related Disclosures for Invs., 87 Fed. Reg. 21334 (Apr. 11, 2022) (to be codified at 17 C.F.R. pt. 229).

47. The Enhancement and Standardization of Climate-Related Disclosures for Invs., 89 Fed. Reg. 21668 (Mar. 28, 2024) (to be codified at 17 C.F.R. pt. 229).

48. *Id.* at 21668; see Securities Act of 1933, 15 U.S.C. §§ 77a–77aa (2023).

49. The Enhancement and Standardization of Climate-Related Disclosures for Invs., 89 Fed. Reg. 21668 (Mar. 28, 2024) (to be codified at 17 C.F.R. pt. 229); see Securities Exchange Act of 1934, 15 U.S.C. §§ 78a–78rr (2023).

requiring a registrant to submit to the Commission specific climate-related disclosures in its registration statements and Exchange Act annual reports.⁵⁰

The climate-related disclosures can be grouped in seven main categories: 1) material climate-related risks; 2) actual or potential material impacts of such risks on the registrant's business; 3) processes implemented by the registrant, if any, for the identification, assessment and management of material climate-related risks; 4) activities performed, and related expenses incurred, for the mitigation of climate-related risks; 5) governance framework designed to monitor and manage climate-related risks, if any (e.g., Board of Directors' oversight); 6) information concerning greenhouse gas emissions;⁵¹ and 7) costs and losses incurred as a result of severe weather events, or related to carbon offsets and renewable energy credits or certificates.⁵²

Described as a "roadmap for abuse,"⁵³ a "crucial step forward" in climate-related risk reporting,⁵⁴ a "burdensome separate disclosure regime" for climate-related information,⁵⁵ and a safeguard against "greenwashing,"⁵⁶ the Final Rule has received conflicting comments from a wide range of stakeholders.⁵⁷

Within one week of its issuance, the Final Rule was challenged by multiple petitioners in six different courts of appeals.⁵⁸ On March 21, 2024, after the SEC filed

50. See SEC, *The Enhancement and Standardization of Climate-Related Disclosures: Final Rules 3* (Mar. 6, 2024), <https://www.sec.gov/files/33-11275-fact-sheet.pdf> [<https://perma.cc/Z38G-FW8A>] (including foreign private issuers).

51. Greenhouse gas emissions disclosures apply only to specific types of registrants (e.g., non-exempt large, accelerated filers and accelerated filers). See Press Release, U.S. Sec. & Exch. Comm'n, SEC Adopts Rules to Enhance and Standardize Climate-Related Disclosures for Investors (Mar. 6, 2024), <https://www.sec.gov/newsroom/press-releases/2024-31> [<https://perma.cc/LVC9-RPGK>]. Contrary to the Proposed Rule, the Final Rule mandates the reporting of Scope 1 and Scope 2 emissions only (thus eliminating the reporting of Scope 3 emissions originally included in the Proposed Rule). See *The Enhancement and Standardization of Climate-Related Disclosures for Invs.*, 89 Fed. Reg. 21675 (Mar. 28, 2024) (to be codified at 17 C.F.R. pt. 229).

52. *The Enhancement and Standardization of Climate-Related Disclosures for Invs.*, 89 Fed. Reg. 21670 (Mar. 28, 2024) (to be codified at 17 C.F.R. pt. 229).

53. See Mark T. Uyeda, *A Climate Regulation Under the Commission's Seal: Dissenting Statement on the Enhancement and Standardization of Climate-Related Disclosures for Investors*, SEC (Mar. 6, 2024), <https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-mandatory-climate-risk-disclosures-030624> [<https://perma.cc/SS9F-NRE8>] (stressing, among other issues, the SEC's lack of authority and expertise to regulate climate-related matters).

54. See Stephanie Jones et al., *An Investor Guide to the SEC Rule on Climate-Related Disclosures*, ENV'T DEF. FUND (Mar. 2024), <https://business.edf.org/wp-content/blogs.dir/90/files/EDF-Investor-Guide-SEC-Climate-Disclosure-Rule.pdf> [<https://perma.cc/4YQV-HPCC>].

55. See Andrew Vollmer et al., *Iowa v. SEC*, CATO INST. (June 20, 2024), <https://www.cato.org/legal-briefs/iowa-v-sec> [<https://perma.cc/894A-LJA3>].

56. Brief for the State of California as Amicus Curiae Supporting Respondent, *State of Iowa v. U.S. SEC*, No. 24-1522 (8th Cir. Mar. 15, 2024).

57. See generally Uyeda, *supra* note 53; Jones et al., *supra* note 54; Vollmer et al., *supra* note 55; Brief for the State of California, *supra* note 56. Stakeholders include, for example, corporations, think tanks, States, non-profit organizations, scholars, and trade associations.

58. See generally *Nat. Res. Def. Council, Inc. v. SEC*, No. 24-707 (2d Cir. filed Mar. 12, 2024); *Liberty Energy Inc., et al. v. SEC*, No. 24-60109 (5th Cir. filed Mar. 15, 2024); *Ohio Bureau of*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

FINANCE & SECURITIES 303

a Notice of Multicircuit Petitions for Review with the Judicial Panel on Multidistrict Litigation,⁵⁹ all the existing petitions⁶⁰ seeking review of the Final Rule were consolidated in the U.S. Court of Appeals for the Eighth Circuit.⁶¹

On April 4, 2024, the Commission issued an Order Issuing Stay of the Final Rule⁶² (SEC Stay Order) until completion of judicial review of the petitions that were consolidated in the Eighth Circuit, indicating that the SEC Stay Order would avoid regulatory uncertainty pending judicial review,⁶³ and promote judicial economy.

The petitioners, which include twenty-five states,⁶⁴ argue that the Final Rule should be vacated because it involves a major question⁶⁵ (by implementing “policy choices with enormous economic and political consequences”),⁶⁶ and was issued without Congress’s authorization, thus exceeding the Commission’s statutory authority.⁶⁷ Further, the petitioners contend that the Final Rule is arbitrary and capricious because the SEC: 1) neither provided justifications for its new policy nor explanations why the existing regulations are not adequate to regulate the already existing registrants’ climate-related reporting obligations; 2) failed to provide substantial and uncontroverted evidence to support its Final Rule; and 3) “relie[s] on scientific articles [n]ot included in the [p]roposed [version of the Final R]ule” issued in 2022.⁶⁸

The Final Rule has also been challenged by some petitioners⁶⁹ for violating the First Amendment, because it would force “corporate disclosures and discussions on controversial political issues.”⁷⁰ According to these petitioners, the Final Rule—by compelling speech that registrants would otherwise not make (i.e., climate-related

Workers’ Comp. v. SEC, No. 24-3220 (6th Cir. filed Mar. 13, 2024); Iowa, et al. v. SEC, No. 24-1522 (8th Cir. filed Jun. 14, 2024); West Virginia, et al. v. SEC, No. 24-10679 (11th Cir. filed Mar. 6, 2024).

59. *Order Issuing Stay*, Securities Act Release No. 11280, Exchange Act Release No. 99908, File No. S7-10-22, 1 (Apr. 4, 2024).

60. *Id.* The existing petitions included Nat’l Legal & Pol’y Ctr. v. SEC, No. 24-60147 (5th Cir. filed on Mar. 21, 2024), in addition to the petitions listed in *supra* note 58.

61. *See generally Order Issuing Stay*, *supra* note 59. The Eighth Circuit was randomly selected from among the courts of appeals in which petitions for review were filed and received within ten days following the issuance of the Final Rule, pursuant to 28 U.S.C. § 2112(a).

62. *See generally Order Issuing Stay*, *supra* note 59.

63. *Id.* at 3.

64. The petitioner states are Alabama, Alaska, Arkansas, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming. *See Iowa v. SEC*, No. 24-1522 (8th Cir. filed Jun. 14, 2024).

65. *West Virginia v. EPA*, 597 U.S. 697, 735 (2022) (based on the major-questions doctrine, “administrative agencies must be able to point to ‘clear congressional authorization’ when they claim the power to make decisions of vast ‘economic and political significance.’”).

66. *Iowa v. SEC*, No. 24-1522, at 15.

67. *Id.* at 18.

68. *Id.* at 16–17, 42–47.

69. *See generally* Opening Brief for Petitioners, Liberty Energy, Inc. v. SEC, No. 24-1624 (8th Cir. filed June 20, 2024).

70. *Id.* at 51.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

304 THE YEAR IN REVIEW

[VOL. 59]

disclosures)—violates the First Amendment,⁷¹ failing strict scrutiny, as well as lower levels of scrutiny.⁷²

The SEC, along with nineteen intervenor states⁷³ (State Intervenor) and California (which filed an *amicus curiae* brief),⁷⁴ have responded to the arguments raised by the petitioners to defend the Final Rule. The SEC contends that the Final Rule should not be set aside because its issuance was based on the SEC's statutory authority, grounded in the plain text of the federal securities laws and on the interpretation of the SEC's authority thereunder.⁷⁵ The Commission asserts that, pursuant to specific statutory provisions,⁷⁶ it has the authority to require registrants to submit information that is "necessary or appropriate in the public interest or for the protection of investors."⁷⁷ According to the SEC, climate-related disclosures are an example of such type of information.⁷⁸

Moreover, the Commission rebuts the petitioners' claim that the Final Rule would violate the First Amendment by noting, among other reasons, that disclosures are not "an integral part of a live, contentious political or moral debate"⁷⁹ and do not require registrants to submit information about "climate change, but about material climate-related risks and impacts that companies face."⁸⁰

The State Intervenor's arguments largely echo the points made by the Commission in its response to the petitioners.⁸¹

In its *Amicus Curiae* Brief, California supports the Final Rule, noting that climate-related disclosures help market participants to make informed investment decisions, and can contribute to the detection of "greenwashing" by requiring registrants to disclose certain greenhouse gas emissions data.⁸²

71. *Id.* (citing *Telescope Media Grp. v. Lucero*, 936 F.3d 740, 752 (8th Cir. 2019) ("[F]reedom of speech includes both the right to speak freely and the right to refrain from speaking at all," and "the latter is perhaps the more sacred of the two rights.")).

72. *Id.*

73. District of Columbia, Arizona, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and Wisconsin.

74. See generally Brief for the State of California as *Amicus Curiae* Supporting Respondent, *State of Iowa v. U.S. SEC*, No. 24-1522 (8th Cir. Aug. 15, 2024).

75. SEC's Opposition to Petitioners' Emergency Motion for Administrative Stay and Stay Pending J. Rev. at 9, *Liberty Energy, Inc. v. SEC*, No. 24-60109 (5th Cir. filed Mar. 13, 2024).

76. *Id.* at 10 (e.g., 15 U.S.C. § 77g(a)(1), 15 U.S.C. §§ 78l(b), (g), and 15 U.S.C. § 78m(a)).

77. *Id.*

78. The Enhancement and Standardization of Climate-Related Disclosures for Investors, 89 Fed. Reg. 21668, 21685 (Mar. 28, 2024).

79. SEC's Opposition to Petitioners' Emergency Motion for Administrative Stay and Stay Pending J. Rev. at 16, *Liberty Energy, Inc. v. SEC*, No. 24-60109 (5th Cir. filed Mar. 13, 2024) (quoting *Free Speech Coal. v. Paxton*, No. 23-50627, 282 (5th Cir. Mar. 7, 2024)).

80. *Id.* at 17.

81. *Id.*

82. Brief for the State of California as *Amicus Curiae* Supporting Respondent, *State of Iowa v. U.S. SEC*, No. 24-1522 (8th Cir. Aug. 15, 2024), at 39-40.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

FINANCE & SECURITIES 305

As of the date of publication of this article, the Eighth Circuit judicial review is still pending.⁸³

B. CALIFORNIA

In addition to the SEC Final Rule, during the course of 2024, two climate-related disclosure laws enacted in California have faced challenges by multiple stakeholders: Senate Bill No. 253 Climate Corporate Data Accountability Act (SB-253)⁸⁴ and Senate Bill No. 261 Greenhouse Gases: Climate-Related Financial Risks (SB-261).⁸⁵ SB-253 and SB-261 were signed into law by the Governor of California on October 7, 2023.⁸⁶

SB-253⁸⁷ requires reporting entities⁸⁸ with total annual revenues exceeding one billion dollars that do business⁸⁹ in California to annually disclose Scope One and Scope Two greenhouse gas emissions (starting in 2026), and Scope Three greenhouse gas emissions (starting in 2027).⁹⁰ SB-261 requires covered entities⁹¹ with more than five hundred million dollars in total annual revenues that do business in California: 1) to prepare a climate-related financial risk report disclosing their climate-related financial risks and the related risk mitigating measures adopted, and 2) to make the climate-related financial risk report publicly available on their

83. *Iowa v. SEC*, CLIMATE CASE CHART (2024) <https://climatecasechart.com/case/iowa-v-securities-exchange-commission/> [<https://perma.cc/D5M6-GVN7>] (last visited Mar. 27, 2025).

84. S.B. 253, 2023 Reg. Sess. (Cal. 2023).

85. S.B. 261, 2023 Reg. Sess. (Cal. 2023).

86. *California's Groundbreaking Climate Accountability Legislation: SB 253 and SB 261 Explained*, GREENPLACES, <https://greenplaces.com/articles/california-sb-253-and-sb-261-explained/> [<https://perma.cc/GEM4-A89A>] (last visited Mar. 27, 2025).

87. SB-253 was amended by California Senate Bill No. 219. See S.B. 219, 2024 (Cal. 2024); Amanda N. Urquiza, *California Governor Gavin Newsom Signs Bill Enacting Changes to California Climate-Related Disclosure Laws*, WILSON SONSINI (Oct. 8, 2024), <https://www.wsgr.com/en/insights/california-governor-gavin-newsom-signs-bill-enacting-changes-to-california-climate-related-disclosure-laws.html> [<https://perma.cc/RZS6-EQGX>].

88. "Reporting entities" are defined as partnerships, corporations, limited liability companies, or other business entities formed under California law, the laws of any other U.S. state or the District of Columbia, or under an act of the Congress. See S.B. 253 § 2, 2023 Reg. Sess. (Cal. 2023).

89. S.B. 253 and S.B. 261 do not define the term "doing business." In the absence of a clear definition, the term has generally been interpreted based on its plain meaning, or the definition set forth in other California statutes (e.g., Cal. Revenue and Tax Code). Cal. Rev. & Tax. Code § 23101(a); S.B. 253 § 2, 2023 Reg. Sess. (Cal. 2023).

90. S.B. 253 § 2 (b)(2)–(4), (c)(A)(I)–(II), 2023 Reg. Sess. (Cal. 2023).

91. "Covered entities" is defined as corporations, partnerships, limited liability companies, or other business entities formed under California law, the laws of any other U.S. state or the District of Columbia, or under an act of the Congress of the United States. S.B. 261 § 2(4), 2023 Reg. Sess. (Cal. 2023). Business entities regulated by the California Department of Insurance or providing insurance services in any other U.S. state are not "covered entities" for purposes of SB-261. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

306 THE YEAR IN REVIEW

[VOL. 59]

website.⁹² The compliance date for the obligations set forth in SB-261 is January 1, 2026 (or earlier), and every two years after 2026.⁹³

On January 30, 2024, six business associations⁹⁴ (Plaintiffs) filed a lawsuit in the U.S. District Court for the Central District of California (the District Court) against the Chair of the California Air Resources Board (the CARB), the CARB's Executive Officer and the Attorney General of California (collectively, Defendants) challenging the constitutionality of both SB-253 and SB-261.⁹⁵

Similar to the challenge to the SEC Final Rule, the challenge to SB-253 and SB-261 also includes a First Amendment claim.⁹⁶ According to Plaintiffs, SB-253 and SB-261 violate the First Amendment by compelling reporting and covered entities to make disclosures on contested issues like climate change.⁹⁷ In addition, Plaintiffs contend that the two California climate-related disclosure laws violate the Supremacy Clause (by regulating areas already governed by federal law),⁹⁸ and the prohibition to regulate extraterritorially set forth in the Constitution (by regulating interstate and foreign commerce through a "de facto regulation of greenhouse gas emissions nationwide").⁹⁹

On May 24, 2024 Plaintiffs filed a Motion for Summary Judgment on the First Amendment claim, arguing that SB-253 and SB-261 should be subject to strict scrutiny.¹⁰⁰ Defendants moved to deny or defer Plaintiffs' motion, contending that the First Amendment does not apply to SB-253 and SB-261, and even if it applied, SB-253 and SB-261 would withstand the standards of review for commercial speech (i.e., intermediate or rational basis).¹⁰¹

On November 5, 2024, the U.S. District Court for the Central District of California issued an order denying Plaintiffs' Motion for Summary Judgment (the District Court Order).¹⁰²

92. S.B. 261 § 2(5)(b)–(c), 2023 Reg. Sess. (Cal. 2023).

93. Michael Vereb, *What is California's Climate-Related Financial Risk Act (SB 261)?*, ARBOR (Sep. 19, 2024), <https://www.arbor.eco/blog/what-is-californias-climate-related-financial-risk-act-sb-261> [<https://perma.cc/W7H2-MG77>].

94. The six business associations include the Chamber of Commerce of the United States of America, the California Chamber of Commerce, American Farm Bureau Federation, Los Angeles County Business Federation, Central Valley Business Federation, and Western Growers Association. Complaint for Declaratory and Injunctive Relief at 1, Chamber of Com. of the U.S. v. Cal. Air Res. Board, No. 2:24-cv-00801 (C.D. Cal. filed on Jan. 30, 2024).

95. *Id.* at 3.

96. *Id.*

97. *Id.* at 18.

98. *Id.* at 22.

99. *Id.*

100. Reply Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Summary Judgment on Claim I at 1, Chamber of Com. of the U.S. v. Cal. Air Res. Board, No. 2:24-cv-00801 (C.D. Cal. filed on Aug. 19, 2024).

101. Order Granting Defendants' Motion to Deny or Defer Plaintiffs' Motion for Summary Judgment and Denying Plaintiffs' Motion for Summary Judgment at 7, Chamber of Com. of the U.S. v. Cal. Air Res. Board, No. 2:24-cv-00801 (C.D. Cal. filed on Nov. 11, 2024).

102. *Id.* at 2.

Contrary to what Defendants argued, the District Court ruled that the First Amendment applies to SB-253 and SB-261, because the primary effect and purpose of the two climate-related disclosure laws is to compel speech.¹⁰³ But the District Court was unable to determine which level of scrutiny should be applied to the case based on the information available, because to make such determination the District Court “. . . needs a record on whether SB-253 and SB-261 regulate a substantial number of companies that do not make potentially misleading environmental claims.”¹⁰⁴ Thus, the District Court declined to rule on whether the climate-related disclosure obligations set forth in SB-253 and SB-261 violate the First Amendment.¹⁰⁵

Conclusion

Litigation of climate-related disclosure laws enacted in the United States is likely to continue throughout the course of 2025. The outcome of the litigation challenging the SEC Final Rule and the California climate-disclosure laws will have significant impacts on a broad range of business entities doing business in California and in the United States at large.

While litigation over the SEC Final Rule and other state climate-related disclosure laws is pending, companies should proactively establish an action plan to prepare to comply with the reporting obligations,¹⁰⁶ should they ultimately take effect.

103. *Id.* at 7–8.

104. *Id.* at 11.

105. *See generally id.*

106. For example, companies could prepare by adopting the international standards set by the International Sustainability Standards Board and the Task Force on Climate-Related Financial Disclosures (TCFD), as various climate-related disclosure laws were partially modeled after the TCFD framework (e.g., SB-261 and the EU Corporate Sustainability Reporting Directive). *How Does the CSRD Compare to the TCFD?*, MANIFEST CLIMATE (May 11, 2023), <https://www.manifestclimate.com/blog/comparing-csrd-tcfd/> [<https://perma.cc/H4UN-2YQH>]; S.B. 261 § 1(i), 2023 Reg. Sess. (Cal. 2023).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

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International Family Law

MELISSA A. KUCINSKI**

This Article discusses significant legal developments in family law during 2024.

I. Marriage

A. MARRIAGE VALIDITY

A California Court of Appeal conducted a thorough analysis of the Hindu Marriage Act to conclude that two spouses who had a ceremony in India in 2010 were not legally married until a later U.S. civil ceremony in 2013.¹ In interpreting the Act, the court accepted the testimony of the husband's Indian attorney expert that, because the husband had not been domiciled in India at the time of the ceremony, he would have had to proactively take formal steps, such as registering the marriage, in order to validate it under the law in India.²

B. RECOGNITION OF FOREIGN MARRIAGE

The New York Supreme Court, Appellate Division, Fourth Department deferred to a finding of the New York Supreme Court of Onondaga County that parties who had lived and had children together in the Democratic Republic of Congo, where they subsequently obtained a document showing that they were married, were in fact married.³

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1. *In re Marriage of V.S. & V.K.*, 315 Cal. Rptr. 3d 255, 257 (Ct. App. 2023).

2. *See generally, In re Marriage of Kaur & Sandhu*, 25 Wash. App. 2d 1008 (Ct. App. 2022).

3. *Mihigo v. Mihigo*, 207 N.Y.S.3d 756, 756 (App. Div. 2024).

II. Dissolution of Marriage

A. RECOGNITION OF FOREIGN DISSOLUTION

A wife sought to dismiss her husband's Connecticut divorce petition because his prior marriage was dissolved by Russian authorities in Crimea.⁴ She argued that, because his prior divorce should be invalid, her marriage to him was bigamous and therefore should be void ab initio.⁵ The Superior Court of Connecticut issued an unpublished opinion, indicating that it would be inequitable to not recognize the prior divorce, because the wife had relied on and benefited from the prior divorce and believed it to be valid when she married her husband.⁶ Therefore, even if the foreign divorce decree would not be recognized by the United States, the prior divorce was entitled to practical recognition.⁷

An English court dissolved the marriage of a couple whose primary marital asset was a Delaware corporation in which each spouse owned a fifty percent interest.⁸ The English court ordered the spouses to sell the Delaware corporation, giving the wife authority to conduct the sale, with partial proceeds from the sale of the husband's shares going to the wife.⁹ Prior to the court-ordered sale, the husband transferred his shares to a Uruguayan company.¹⁰ The English court ordered that the husband's stock transfer be voided.¹¹ The wife sought enforcement of the English orders in Delaware, as a matter of comity.¹² The wife requested that the Court of Chancery of Delaware order the corporation to issue a new share certificate in her name or seize corporate assets to satisfy the husband's obligations to her.¹³ The court dismissed the complaint, finding that the wife had not joined an indispensable party, and, in fact, that party—the Uruguayan company—was not able to be joined, as it could not be served because its only tie to Delaware appeared to be the shares it owned in the Delaware corporation.¹⁴ The Delaware court also expressed some concern over the English court's decision to remove all discretion from the corporation's sole director, who was not a party to the divorce proceedings.¹⁵

The Court of Appeals of Texas affirmed a trial court decision to refuse recognition of a Pakistani divorce decree as a matter of comity.¹⁶ It concluded that the wife

4. *Korshunova v. Pershyn*, No. FBT-FA-23-6122178-S, 2024 WL 2075953, at *1 (Conn. Super. Ct. May 6, 2024).

5. *Id.*

6. *Id.* at *4.

7. *Id.*

8. *D'Aulan v. D'Aulan*, No. 2023-0074-LWW, 2024 WL 3219265, at *1 (Del. Ch. June 27, 2024).

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* at *4.

14. *D'Aulan*, 2024 WL 3219265, at *4.

15. *Id.* at *9.

16. *In re Marriage of Sabir & Javed*, No. 05-23-00837-CV, 2024 WL 3507200, at *1, *2 (Tex. App.—Dallas July 23, 2024, no pet.).

did not receive minimal due process protections when the parties had both first filed for divorce in Texas (where both were domiciled) and when the husband obtained a Pakistani divorce without providing the wife notice or an opportunity to be heard at a meaningful time or manner.¹⁷

B. NON-JUDICIAL DISSOLUTIONS

After the husband filed for divorce in Washington State, the spouses engaged in dispute resolution in Japan and reached a full marital settlement agreement, in which the parties agreed that they would finalize their divorce in both Japan and Washington State.¹⁸ The wife filed a divorce notification with the appropriate administrative authority in Japan, which accepted the notification and update to the family's registry.¹⁹ This legally divorced the couple in Japan.²⁰ The husband then proceeded with the Washington State divorce proceeding, which had been stayed, seeking enforcement of the agreement, particularly as it related to the disposition of their Washington State real property.²¹ The Court of Appeals of Washington concluded that Washington State courts had *in rem* jurisdiction over any real property within the state and over the marriage, given that the husband was domiciled there, and that required a Washington State judgment.²² Therefore, the trial court did not abuse its discretion to refuse recognition to the Japanese administrative divorce, particularly because it would have deprived Washington State of its *in rem* jurisdiction.²³

C. SIMULTANEOUS DISSOLUTION PROCEEDINGS

The New York Supreme Court, Appellate Division, First Department, affirmed the dismissal of a New York divorce case that had been filed before a Brazilian divorce case in which the Brazilian spouses had significant assets in Brazil and Brazilian law required those assets to be distributed pursuant to litigation in Brazil.²⁴ The court therefore concluded that New York was an inconvenient forum.²⁵

17. *Id.* at *2.

18. *See generally*, *In re Marriage of Butler & Katani*, 31 Wash. App. 2d 1059 (Ct. App. 2024).

19. *In re Marriage of Butler*, No. 57861-1-II, 2024 Wash. App. LEXIS 1358, *3 (Ct. App. July 9, 2024).

20. *Id.*

21. *Id.* at *2.

22. *Id.* at *4.

23. *Id.*

24. *Teixeira v. Teixeira*, 203 N.Y.S.3d 21, 22 (App. Div. 2024).

25. *Id.* at 426.

III. Family Formation

A. INTER-COUNTRY ADOPTION

The Board of Immigration Appeals of the U.S. Department of Justice Executive Office for Immigration Review dismissed a grandmother's appeal requesting a relative visa for her grandchild, whom she had adopted after the child entered the United States from Cabo Verde.²⁶ She did not submit a written statement from the Central Authority of Cabo Verde regarding the grandchild's habitual residence or evidence that she attempted to obtain a statement.²⁷ Where the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (Adoption Convention) affects relations between the United States and another country, it requires cooperation between the countries.²⁸

IV. Children

A. CUSTODY DETERMINATIONS

1. *International Travel of Children*

The U.S. Department of State adopted a final rule providing that private attorneys, interpreters, and other third parties may attend certain appointments at passport agencies and centers and at U.S. embassies and consulates overseas to assist a person requesting certain enumerated services, including appointments for passports and consular reports of birth abroad.²⁹

2. *Relocation of Children*

The Louisiana Court of Appeals, First Circuit, affirmed the modification of a child custody order transferring primary custody from a father in Louisiana to a mother in the Philippines.³⁰ The father had expressed significant concern throughout the several years of litigation regarding parental child abduction if the child were permitted to step foot in the Philippines, notwithstanding court orders allowing such travel.³¹ The trial court determined that the father's refusal to comply with its orders constituted a material change in circumstances warranting modification of custody.³²

26. *In re Furtado*, 28 I. & N. Dec. 794, 801 (May 17, 2024).

27. *Id.*

28. *Id.* at 799.

29. Third-Party Attendance at Appointments for Passport, Consular Report of Birth Abroad (CRBA), and Certain Other Services, 89 Fed. Reg. 41308-01 (May 13, 2024).

30. *Morgan v. Morgan*, 390 So.3d 317 (La. 2024).

31. *Id.* at 323.

32. *Id.* at 322.

B. JURISDICTION OVER CUSTODY

The Court of Appeals of Iowa held that a District Court correctly vacated a custody order when it concluded it lacked the subject matter jurisdiction to enter the order.³³ The District Court observed that “[s]ubject matter jurisdiction is not discretionary. It cannot be waived by the parties or the court.”³⁴ The Court of Appeals affirmed because a “ruling entered without subject matter jurisdiction is void and must be vacated.”³⁵

1. *Home State and Significant Connections*

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) prioritizes a child’s home state for jurisdiction to decide that child’s custody.³⁶ That child can be temporarily absent from their home state without disturbing the home state analysis.³⁷ Thus, when a child, age four, had traveled several times to Nevada to visit with her father but had lived primarily in the Philippines for a total of three years and five months since birth, the time in Nevada was only a temporary absence from the home state of the Philippines.³⁸ The Nevada Supreme Court applied a totality-of-the-circumstances analysis in determining whether Nevada was a temporary absence.³⁹

In 2016, a Michigan court issued an initial child custody determination whereby a two year old child would rotate every three months between his mother in Texas and his father in Michigan.⁴⁰ The father then abducted the child to India for more than seventeen months, before the mother brought the child back to the United States.⁴¹ The child’s physical presence in India did not make India the child’s home state.⁴² Texas could assume jurisdiction because it had significant connections to the child and Mother, and Michigan had previously declined jurisdiction as an inconvenient forum.⁴³

2. *Exclusive Continuing Jurisdiction*

The parents obtained a Mexican joint custody order.⁴⁴ Thereafter, the mother and child began residing in South Carolina, while the father remained in Mexico.⁴⁵

33. Meador v. Lu, 14 N.W.3d 159, 160 (Iowa Ct. App. 2024).

34. *Id.* at 162.

35. *Id.* at 162–63.

36. Kemp v. Turqueza, No. 86347, 2024 WL 396207, at *1 (Nev. Jan. 31, 2024).

37. *Id.* at *2.

38. *Id.* at *3.

39. *Id.*

40. *In re J.S.N.*, No. 14-23-00572-CV, 2024 WL 1269914, at *1 (Tex. App.—Houston [14th Dist.] Mar. 26, 2024, pet. denied).

41. *Id.*

42. *Id.*

43. *Id.*

44. Baez v. Solano, No. 2023-001975, 2024 WL 3549737, at *1 (S.C. Ct. App. July 26, 2024).

45. *Id.*

The mother filed a complaint in the South Carolina family court for a sole custody order.⁴⁶ The father consented in his answer.⁴⁷ The family court dismissed for lack of jurisdiction, and the Court of Appeals affirmed, as the UCCJEA affords Mexico continuing exclusive jurisdiction.⁴⁸

3. *Declining Jurisdiction*

a. *Inconvenient Forum*

Taiwanese parents, living in Kentucky with their child since her birth, agreed in December 2020 that they and their child should stay with relatives in Taiwan until the U.S. COVID-19 situation improved.⁴⁹ The father returned, without the child, to Kentucky and filed a divorce action, seeking custody of the child.⁵⁰ The mother argued, inter alia, that Kentucky should decline to exercise jurisdiction because Taiwan was a more convenient forum, and that the father was allegedly forum shopping.⁵¹ The Kentucky court disagreed, finding that the child had been in Taiwan for eighteen months because the mother violated court orders requiring her to return the child to Kentucky.⁵²

b. *Unjustifiable Conduct*

In a non-precedential opinion, the Indiana Court of Appeals affirmed a trial court determination that Belarus was a child's home state because of the father's bad behavior in abducting the child and concealing the child's whereabouts in the United States.⁵³ The court did not explicitly decline to exercise jurisdiction based on the father's unjustifiable conduct because it concluded that Belarus was the child's home state regardless.⁵⁴ Although the opinion referenced the UCCJEA, it cited a decision for the proposition that father's divorce filing in Belarus provided the Belarusian court jurisdiction over custody.⁵⁵ While Belarus might be the child's home state, the analysis of the Court of Appeals did not follow a logical legal path.⁵⁶

4. *Non-Application of the UCCJEA based on Human Rights*

On November 14, 2023, the Court of Appeals of Washington affirmed a trial court's opinion refusing to recognize Saudi Arabia as a sister-state because the

46. *Id.*

47. *Id.*

48. *Id.* at *2.

49. *Wu v. Wu*, No. 2022-CA-1128-MR, 2024 WL 649029, at *1 (Ky. Ct. App. Feb. 16, 2024).

50. *Id.*

51. *Id.*

52. *Id.* at *8.

53. *Gregory v. Gregory*, 231 N.E.3d 198, 198 (Ind. Ct. App. 2024).

54. *Id.*

55. *Id.*

56. *Id.*

latter's law punishes "apostasy."⁵⁷ As a result, the trial court assumed child custody jurisdiction under the UCCJEA, refusing to recognize a Saudi custody order that was otherwise made in substantial conformity with the jurisdictional predicates of the UCCJEA.⁵⁸

V. International Parental Child Abduction

A. THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

1. Applicability of the Abduction Convention

In the United States, the Convention on the Civil Aspects of International Child Abduction, done at The Hague October 25, 1980, (Abduction Convention)⁵⁹ is implemented by the International Child Abduction Remedies Act (ICARA).⁶⁰ Federal and state courts have concurrent jurisdiction regarding a parent's petition for the return of their child pursuant to the Abduction Convention.⁶¹

To obtain an order returning a child pursuant to the Abduction Convention, the petitioner must prove that the child was wrongfully removed from, or retained outside of, the child's "habitual residence" and that the petitioner had "a right of custody," which they were "actually exercising" (or would have exercised, but for the abduction) under the law of the child's habitual residence.

Countries may become a party to the Abduction Convention as a result of ratification, acceptance, or approval of, or accession to, the Convention. An accession will have effect between the acceding country and another party to the Convention if the latter country has declared its acceptance of the accession.⁶² The Abduction Convention ceases to apply when the child in question turns sixteen.⁶³

57. *In re Marriage of AlHaidari*, No. 38084-0-III, 2023 WL 7526286, at *8 (Wash. Ct. App. Nov. 14, 2023).

58. *Id.*

59. See generally International Child Abduction Convention Between the United States & Other Governments, Hague, Oct. 25, 1980, T.I.A.S. No. 11,670.

60. See generally Findings & Declarations, 22 U.S.C. § 9001 (2014) et seq.

61. *The 1980 Hague Convention FAQ – Abstention and Removal*, FJC (Mar. 9, 2016), <https://www.fjc.gov/content/311332/abstention-and-removal> [<https://perma.cc/DN4X-EFW2>].

62. See *Alikovna v Viktorovich*, No. 19-cv-23408, 2019 WL 4038521, at *2 (S.D. Fla. Aug. 27, 2019) (dismissing a petition to return a child to Russia because the United States had not accepted Russia's accession).

63. Hague Convention on the Civil Aspects of International Child Abduction, art. 4, Oct. 25, 1980, T.I.A.S. No. 11,670, 1343 U.N.T.S. 89 [hereinafter Hague Convention]; see, e.g., *Noergaard v. Noergaard*, 57 Cal.App.5th 841, 852 (Ct. App. 2020) (case dismissed as moot when child turned sixteen during the proceeding).

B. PETITIONER'S CASE

1. *Date of Wrongful Removal or Retention*

A petitioner mother obtained a declaration from the U.S. District Court for the District of Maryland under Article 15 of the Abduction Convention, declaring that the respondent father was wrongfully retaining their child in Germany.⁶⁴

2. *Habitual Residence*

The Abduction Convention does not define the term “habitual residence.”⁶⁵ In 2020, the U.S. Supreme Court attempted to provide clarity for the undefined term in *Monasky v. Taglieri*,⁶⁶ holding that “a child’s habitual residence depends on the totality of the circumstances specific to the case.”⁶⁷ The opinion included a footnote that provided some considerations that courts have applied when considering whether a child has acclimatized to a habitual residence.⁶⁸

The U.S. District Court for the Northern District of Ohio determined that the habitual residence of three children was the United States because they were “at home” in Ohio.⁶⁹ The court considered evidence that included the last shared intent of the parents, the purpose of school registration in Japan, participation in activities by the children, and a variety of text messages and family meetings.⁷⁰

The U.S. District Court for the District of Oregon concluded that two young children lacked a habitual residence and denied the incarcerated father’s request to return them to Scotland.⁷¹ One child was born in Jersey and the other was born in Scotland.⁷² The children had no family or friends in Scotland and had no meaningful relationship with their father.⁷³ Their mother had long expressed interest in relocating to Oregon.⁷⁴ The court found that the father’s coercive behavior supported the conclusion.⁷⁵

The U.S. District Court for the Southern District of Florida concluded a child’s habitual residence was the United States, not Argentina.⁷⁶ The child was born in the United States in 2015 and moved to Argentina with petitioner mother in

64. *Bartlett v. Brdlik*, Civ. No. 24-01174-SAG, 2024 WL 2846154, at *1 (D. Md. June 5, 2024) (respondent father was provided forty-five days from service of process to move to rescind because of the swiftness of the process).

65. See Hague Convention, *supra* note 63, at art. 5.

66. *Monasky v. Taglieri*, 589 U.S. 68, 68–69 (2020).

67. *Id.*

68. *Id.* at 92 n.3.

69. *Hiroki v. Hiroki*, 698 F.Supp.3d 1023, 1035 (N.D. Ohio 2023).

70. *Id.* at 1028–30, 1034.

71. *Nisbet v. Bridger*, No. 3:23-cv-00850-IM, 2023 WL 6998081, at *12–13 (D. Or. Oct. 24, 2023), *aff’d*, 124 F.4th 577, 581 (9th Cir. 2024).

72. *Id.* at *3–4.

73. *Id.* at *5.

74. *Id.* at *4.

75. *Id.* at *7.

76. *Bre v. Aguirre*, No. 23-23928, 2023 WL 8371981, at *3 (S.D. Fla. Dec. 4, 2023).

2017.⁷⁷ In 2021, the parents agreed to a parenting plan identifying the United States as the habitual residence.⁷⁸ When the petitioner mother claimed that she was defrauded into signing the parenting plan because of her limited English, the court applied standard contract rules.⁷⁹ In contrast, the U.S. Court of Appeals for the Seventh Circuit affirmed a District Court judgment concluding that a parental stipulation as to their child's future habitual residence is only one factor, "albeit a powerful one," to be considered in the totality of the circumstances analysis.⁸⁰

The U.S. Court of Appeals for the Eleventh Circuit affirmed a decision of the U.S. District Court for the Southern District of Florida, which held that the habitual residence of a child had not changed from Canada to the United States.⁸¹ The Court of Appeals, while only citing *Monasky* for the standard of review, observed that in determining whether the habitual residence had changed, "[t]he first step . . . is forming a settled intention to abandon the one left behind."⁸²

The U.S. District Court for the Western District of Washington concluded that the United States was a child's habitual residence.⁸³ The child moved back and forth with his parents between Mexico and Washington State routinely, with the petitioner father owning houses in each location.⁸⁴ The court concluded that, due to parental discord, it could not look to shared intentions to determine habitual residence.⁸⁵ The court concluded that the parents' actions showed an intention to remain in Washington State, where the child had acclimatized.⁸⁶

The U.S. District Court for the Western District of Missouri concluded that it was required only to determine whether a petitioner father met his burden in establishing the habitual residence of a child.⁸⁷ It was not otherwise required to decide on a habitual residence.⁸⁸ A young child, born into a nomadic family in Argentina, where they were stuck after COVID-19 lockdowns, was found not habitually resident in Argentina prior to a removal.⁸⁹

The U.S. District Court for the Western District of Pennsylvania analyzed the habitual residence of children who had moved from Finland to the United States for one year and decided that their habitual residence had shifted to the United States.⁹⁰ The court considered the acclimatization of the children and the parents'

77. *Id.* at *1.

78. *Id.* at *2.

79. *Id.*

80. *Baz v. Patterson*, 100 F.4th 854, 867 (7th Cir. 2024).

81. *Horacius v. Richard*, No. 24-10801, 2024 WL 3580772, at *1 (11th Cir. Jul 30, 2024).

82. *Id.* at *4 (quoting *Ruiz v. Tenorio*, 392 F.3d 1247, 1252 (11th Cir. 2004)).

83. *Morrison v. Chang*, No. 2:23-CV-1655-RAJ, 2024 WL 1765675, at *9 (W.D. Wash. Apr. 24, 2024).

84. *Id.* at *8.

85. *Id.*

86. *Id.* at *9.

87. *Alzu v. Huff*, 738 F. Supp. 3d 1157, 1163 (W.D. Mo. 2024).

88. *Id.*

89. *Id.* at 1162-63.

90. *Mirtti v. Mirtti*, No. 1:24-77, 2024 WL 3223790, at *1 (W.D. Pa. June 28, 2024).

shared intent.⁹¹ In considering intent, the court believed that the move had included a “degree of settled purpose.”⁹² Moreover, the court found support in an agreement signed by the parents agreeing that the children would remain in the United States with the respondent unless and until the parents agreed otherwise.⁹³

3. *Rights of Custody and Their Exercise*

A removal or retention is only wrongful for purposes of the Abduction Convention if the petitioner had a right of custody under the law of the child’s habitual residence and was “actually exercising” that right at the time of removal or retention, or would have exercised that right, but for the removal or retention.⁹⁴

Normally, the question of exercise of custody rights is not an issue in the case. Most courts follow the determination made in *Friedrich v. Friedrich*⁹⁵ that the “only acceptable solution, in the absence of a ruling from a court in the habitual residence, is to liberally find ‘exercise’ whenever a parent with de jure custody rights keeps, or seeks to keep, any sort of regular contact with his or her child.”⁹⁶

It is the petitioner’s burden to demonstrate that they have a right of custody at the time of the removal or retention, pursuant to the law of the habitual residence.⁹⁷ The U.S. Court of Appeals for the Tenth Circuit affirmed a U.S. District Court for the District of Colorado decision that a petitioner, who was subject to a temporary protective order prohibiting him from having contact with his children, failed to establish that he had a right of custody.⁹⁸ The petitioner did not provide evidence, such as expert testimony, regarding the relationship between the order and the Australian Family Law Act.⁹⁹

It is commonly accepted that the civil law right of *patria potestas* is a “right of custody” under the Abduction Convention.¹⁰⁰ Where parents entered into a custody agreement, which was incorporated into a decree, the respondent argued that the decree superseded the petitioner’s *patria potestas* rights.¹⁰¹ The Colorado Court of Appeals disagreed as the decree did not provide for the surrender of these rights.¹⁰²

A father and paternal grandmother filed a petition for the return of a minor child.¹⁰³ The U.S. District Court for the Northern District of Texas held that,

91. *Id.* at *15.

92. *Id.* at *14.

93. *Id.* at *5.

94. Hague Convention, *supra* note 63, at art. 3.

95. *Friedrich v. Friedrich*, 78 F.3d 1060, 1065 (6th Cir. 1996).

96. *Abrego v. Guerra*, No. 2:23-cv-02515MSN-cgc, at *5 (W.D. Tenn. May 28, 2024) (recent case utilizing the *Friedrich* determination).

97. *Livingstone v. Livingstone*, Nos. 22-1308, 22-1343, 2023 WL 8524922, at *1 (10th Cir. Dec. 8, 2023).

98. *Id.* at *1, *6 n.6.

99. *Id.*

100. *In re Marriage of Morales & Meixueiro*, 546 P.3d 639, 644 (Colo. App. 2024).

101. *Id.* at 645.

102. *Id.*

103. *Brito v. Castro*, No. 3:23-CV-01726-E, 2024 WL 2967273, at *1 (N.D. Tex. May 8, 2024).

although the father met his burden in proving that he had a right of custody, the grandmother failed to meet her burden.¹⁰⁴

C. RESPONDENT'S CASE

Discussed below, there are several exceptions that a respondent may assert in arguing that a child should not be returned under the Abduction Convention.

1. *Child is Settled*

Article 12 of the Abduction Convention provides that the authorities need not return a child if more than one year has elapsed between the wrongful removal or retention of the child and the commencement of proceedings for the return of the child, and the child is now settled in the child's new environment.¹⁰⁵ A retention occurs not on the date the abducting parent formed the intent to wrongfully retain the child, but rather on the date the parent's actions were so unequivocal that the petitioner knew or should have known that the child would not be returned.¹⁰⁶

The U.S. Court of Appeals for the First Circuit affirmed a decision that a child was now settled, when the U.S. District Court for the District of Massachusetts considered whether the child was settled in Martha's Vineyard, Massachusetts, rather than in the entirety of the United States.¹⁰⁷

The U.S. Court of Appeals for the Eleventh Circuit concluded that a child's immigration status, while one factor in determining whether a child is now settled, is not the sole or determinative factor.¹⁰⁸

The U.S. District Court for the Western District of Tennessee concluded that a respondent mother failed to prove that the child was now settled in the United States, despite the father's not filing the petition for more than two years.¹⁰⁹ In viewing the evidence, the court concluded that the child, who was in school, doing well, learning English, and had friends, was no more settled in Memphis than he was in El Salvador.¹¹⁰

104. *Id.* at *6-7.

105. *Monzon v. De La Roca*, 910 F.3d 92, 96 (3d Cir. 2018) (explaining that in the United States, this period is measured between the date of wrongful removal or retention and the date on which the petition is filed in a federal or state court; seeking the assistance of a central authority does not constitute commencement of a proceeding). *See also* Hague Convention, *supra* note 63, at art. 12.

106. *Palencia v. Perez*, 921 F.3d 1333, 1342-43 (11th Cir. 2019); *Moreno v. Zank*, 465 F. Supp. 3d 904, 909 (W.D. Mich. 2020).

107. *Da Costa v. De Lima*, 94 F.4th 174, 178 (1st Cir. 2024).

108. *Cuenca v. Rojas*, 99 F.4th 1344, 1347 (11th Cir. 2024).

109. *Abrego v. Guerra*, No. 2:23-CV-02515-MSN-CGC, 2024 WL 2732307, at *1 (W.D. Tenn. May 28, 2024).

110. *Id.* at *6-7.

a. Grave Risk or Intolerable Situation

Pursuant to Article 13(b), a court need not return a child if “there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.”¹¹¹ In determining whether to sustain the exception when it is founded on domestic violence, the court must consider the nature and frequency of the abuse, the likelihood of its recurrence, and its effect on the child.¹¹² In addition, a court may consider measures to reduce the likelihood of harm.¹¹³ The Supreme Court has observed that “[w]hile a district court has no obligation under the Convention to consider ameliorative measures that have not been raised by the parties, it ordinarily should address ameliorative measures raised by the parties or obviously suggested by the circumstances of the case.”¹¹⁴

In its fourth iteration, the U.S. District Court for the Eastern District of New York concluded that BAS, a child abducted by his mother to New York in 2018, and who was the subject of a 2022 U.S. Supreme Court case, would be exposed to a grave risk of harm if returned to Italy.¹¹⁵ The Court was concerned that there remained a risk BAS could be placed in foster care upon return.¹¹⁶ The court concluded that:

[T]he mere process of uprooting this fragile seven-year-old, diagnosed with [Post-Traumatic Stress Disorder] and still coming to grips with his mother’s death, as well as the uncertainty about what would happen if he were returned to Italy, would expose him to a grave risk of psychological harm and put him in an intolerable situation.¹¹⁷

Although harm to the child is required under Article 13(b), many courts recognize that sustained spousal abuse can, in some instances, present such a risk.¹¹⁸ Spousal abuse, one court said, is relevant for Article 13(b) purposes only if it “seriously endangers” the child.¹¹⁹ There is a difference between evidence of a clear and long history of spousal abuse, which could suffice to show a propensity for child abuse, and evidence of isolated incidents of abuse, which might demonstrate a risk of harm only to the spouse.¹²⁰ At a minimum, the respondent must “draw a connection” showing the risk that such abuse “constitute[s] a grave risk to the children.”¹²¹ The U.S. District Court for the Western District of Washington did not find a grave risk of harm to two children based on the emotional abuse their

111. *Golan v. Saada*, 96 U.S. 666, 674–77 (2022).

112. *Id.*

113. *Id.* at 1892.

114. *Id.* at 1893.

115. *Saada v. Golan*, 712 F. Supp. 3d 361, 378 (E.D.N.Y. 2024).

116. *Id.* at 376–77.

117. *Id.* at 378.

118. *Gallegos v. Garcia Soto*, No. 1:20-CV-92-RP, 2020 WL 2086554, at *3 (W.D. Tex. Apr. 30, 2020).

119. *Id.* at *4.

120. *Id.*

121. *Id.*

respondent mother alleged she experienced, as she did not allege that petitioner emotionally abused the children.¹²² Additionally, the separation of the children from the respondent's care because she could not return to Scotland was insufficient for this exception.¹²³

Since the Supreme Court opinion in *Golan v. Saada*,¹²⁴ savvy petitioners tend to propose ameliorative measures to persuade a court that it may order the safe return of a child even if it finds a grave risk of harm to a child upon return. The U.S. District Court for the Northern District of California, which found a grave risk that a child would be exposed to psychological harm upon return, invited the petitioner father to submit proposed ameliorative measures, which the Court found to be insufficient.¹²⁵

The U.S. Court of Appeals for the Eighth Circuit affirmed the U.S. District Court of the Southern District of Iowa's conclusion that the burden for a grave risk of harm was not met where a petitioner mother had in the past punished her daughter with a belt.¹²⁶

The U.S. District Court for the District of Minnesota rejected a respondent mother's argument that the high level of organized crime in Sinaloa, Mexico presented a grave risk.¹²⁷ The mother testified to being a victim of armed robbery weekly at the service station where she worked and that family members had been kidnapped and killed.¹²⁸ The court observed that it did not appear that the child "was ever threatened or harmed directly or specifically" and that there was no indication that the child would be targeted upon return.¹²⁹

The U.S. Court of Appeals for the Second Circuit confirmed that a child may be returned to a third country, as a temporary ameliorative measure, if returning the child to their habitual residence would expose the child to a grave risk of harm.¹³⁰

b. Mature Child's Objection

In applying this exception, the court must consider whether the child objects to being returned to the country of the child's habitual residence and not whether the child has a preference to live in a specific country or with a specific parent.¹³¹

A child, who was age thirteen at the time of trial, was interviewed with an interpreter in chambers by the judge in the U.S. District Court for the Eastern District

122. *Harvey v. Means*, No. 2:23-CV-1712, 2024 WL 324980, at *5 (W.D. Wash. Jan. 29, 2024).

123. *Id.* at *6.

124. *Golan v. Saada*, 596 U.S. 666 (2022).

125. *Delgado v. Marquez*, No. 23-CV-05141-VKD, 2024 WL 517874, at *12 (N.D. Cal. Feb 09, 2024).

126. *Rodriguez v. Molina*, 96 F.4th 1079, 1084 (8th Cir. 2024).

127. *Rodriguez v. Noriega*, 732 F. Supp. 3d 990, 998 (D. Minn. 2024).

128. *Id.* at 1000.

129. *Id.*

130. *Tereshchenko v. Karimi*, 102 F.4th 111, 132 (2d Cir. 2024).

131. *Gross v. Gross*, No. 23-CV-1632 (AMD), 2024 WL 1367957, at *6 (E.D.N.Y. Mar. 31, 2024).

of New York.¹³² The judge concluded that the child was mature and had a particularized objection, noting that the child has articulated the reasons for his objection: “his academic struggles and general unhappiness in England in contrast with his life in New York, where he has friends and does well.”¹³³

The U.S. District Court for the Southern District of New York concluded that a child was mature and objected to his return to Chile after interviewing the child in chambers for three-and-a-half hours, reviewing a statement prepared by the child and his attorney, and hearing witness testimony.¹³⁴

c. Human Rights

Article 20 provides that the return of a child may be refused if return would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.¹³⁵ The U.S. Court of Appeals for the Fifth Circuit reviewed a decision of U.S. District Court for the Western District of Texas that denied a petition in part based on Article 20.¹³⁶ The Court of Appeals reviewed the District Court’s findings of fact regarding invocation of Article 20 for clear error and it reviewed *de novo* whether the circumstances permit a U.S. court to decline to return a child pursuant to Article 20.¹³⁷ The Fifth Circuit decided that the District Court erred as it focused on the mother’s action regarding the children’s education and not on U.S. law or policy.¹³⁸

d. Consent/Acquiescence

To show acquiescence by the petitioner, there must be either an act or statement with the requisite formality, such as testimony in a judicial proceeding, a convincing written renunciation of rights, or a consistent attitude of acquiescence over a significant period.¹³⁹ Some courts have required that the totality of circumstances must be examined to determine whether there was consent or acquiescence.¹⁴⁰

The U.S. District Court for the Northern District of Texas concluded “that neither [father’s] failure to demand a child’s return through the communications with [mother] nor continued child support payments constitutes evidence of a subjective intent to acquiesce.”¹⁴¹

132. *Id.*

133. *Id.*

134. *Swett v. Bowe*, 733 F. Supp. 3d 225, 271-72, 294 (S.D. N.Y. 2024).

135. *Galaviz v. Reyes*, 95 F.4th 246, 251 (5th Cir. 2024).

136. *Id.* at 250–51.

137. *Id.* at 254.

138. *Id.*

139. *Diagne v. Demartino*, No. 2:18-CV-11793, 2018 WL 4385659, at *8 (E.D. Mich. Sept. 14, 2018). Motion for a new trial and for relief from the judgment denied *Diagne v. Demartino*, No. 18-11793, 2018 WL 6064965, at *4 (E.D. Mich. Nov. 20, 2018); *see also* *Djeri v. Djeri*, No. 2:18-CV-1780, 2019 WL 1046893, at *5 (S.D. Ohio Mar. 5, 2019).

140. *Diagne*, 2018 WL 4385659, at *8.

141. *Garcia v. Posada*, 728 F. Supp. 3d 430, 446 (N.D. Tex. 2024).

A respondent mother removed the parties' child from Mexico to Iowa, and upon arriving in Iowa, sought a domestic violence protective order.¹⁴² The petitioner father agreed to the entry of a Final Protective Order by Consent Agreement, which stated that the child shall remain in Iowa pending further order from a court.¹⁴³ As a result, the U.S. District Court concluded that the petitioner had acquiesced.¹⁴⁴

2. *Other Issues*

a. *Attorney's Fees*

Under ICARA, attorney fees and costs are to be awarded to a prevailing petitioner unless the respondent can show that the award would be clearly inappropriate.¹⁴⁵ Most circuit courts have held that district courts have broad discretion to determine when an award of costs and fees is inappropriate.¹⁴⁶ The "clearly inappropriate" inquiry is necessarily dependent on the facts of each case.¹⁴⁷ But the following two considerations are often relied on in determining whether to grant fees and costs under ICARA: (1) whether a fee award would impose such a financial hardship that it would significantly impair the respondent's ability to care for the child, and (2) whether a respondent had a good faith belief that his or her actions in removing or retaining a child were legal or justified.¹⁴⁸

The Nevada Court of Appeals reversed and remanded an order denying a prevailing petitioner mother's request for attorney fees because the district court, which made no findings, failed to consider properly the presumption in favor of awarding fees and costs.¹⁴⁹

A court has the authority to order fees and costs even if a child turns sixteen after the return order.¹⁵⁰ But what can be awarded as costs, as opposed to attorney fees, is limited by 22 U.S.C. § 9007(b), and the U.S. District Court for the Southern District of New York has held that costs of holding a trial remotely are not included.¹⁵¹

142. *Staggers v. Timmerman*, 746 F. Supp. 3d 635, 640 (S.D. Iowa 2024).

143. *Id.*

144. *Id.* at 464–65.

145. This may also include expenses and fees incurred when the original order for fees has to be defended on appeal. See *Sundberg v. Bailey*, No. 1:17-cv-00300-MR-DLH, 2019 WL 2550541, at *2 (W.D.N.C. June 19, 2019).

146. *West v. Dobrev*, 735 F.3d 921, 932 (10th Cir. 2013); *Whallon v. Lynn*, 356 F.3d 138, 140 (1st Cir. 2004).

147. *Wtulich v. Filipkowska*, No. 16-CV-2941 (JO), 2020 WL 1433877, at *1 (E.D.N.Y. Mar. 24, 2020).

148. In one case the court determined the party's financial situation was not so disparate as to deny fees but was sufficient to slightly reduce the amount the petitioner was seeking. See *Wtulich v. Filipkowska*, 2020 WL 1433877, at *2 (E.D. N.Y. Mar. 24, 2020) (unpublished).

149. *Garcia v. Rosales*, No. 85962-COA, 2024 WL 236780, at *2 (Nev. App. Jan. 22, 2024).

150. *Noergaard v. Noergaard*, 57 Cal.App.5th 841, 854 (Ct. App. 2020).

151. *Jacquety v. Tena Baptista*, 549 F.Supp.3d 293, 300 (S.D.N.Y. 2021).

The provisions in ICARA authorize the award of attorney fees to the petitioner.¹⁵² It follows that nothing in ICARA provides that fees may be awarded to a prevailing respondent.¹⁵³

The U.S. Court of Appeals for the Eleventh Circuit affirmed a reduced fee award.¹⁵⁴ The respondent argued that the District Court should have rejected the request to award fees completely.¹⁵⁵ In this case, the district court had, instead, reduced the fee award, an option the respondent argued was unavailable to the District Court.¹⁵⁶

b. Procedural Issues

i. *Abstention*

Pursuant to Article 16 of the Abduction Convention,

[A]fter receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.¹⁵⁷

After a state court issued an ex parte temporary custody order against him, a petitioner father filed an Abduction Convention return petition in the U.S. District Court for the Southern District of Ohio.¹⁵⁸ Although ICARA establishes that federal and state courts have concurrent jurisdiction to hear such petitions, the District Court dismissed the petition as it abstained from exercising jurisdiction pursuant to the Younger Doctrine based on the earlier exercise of jurisdiction by a state court.¹⁵⁹ In its opinion, the District Court stated that Article 16 could not require a state court to vacate an order already issued.¹⁶⁰

ii. *Motions to Dismiss or Strike*

The U.S. District Court for the Central District of Illinois concluded that it could entertain a motion to dismiss an Abduction Convention case, in favor of a state court, based on forum non conveniens.¹⁶¹

152. *Stone v. Stone*, Civil Action No. 19-17962 (MAS) (ZNQ), 2020 WL 491194, at * 1 (D. N.J. Jan. 30, 2020).

153. *Id.*

154. *Castang v. Kim*, No. 24-12185, WL 2024 3949445, at *3 (11th Cir. Aug. 27, 2024).

155. *Id.* at *2.

156. *Id.*

157. See Hague Convention, *supra* note 63, at art. 16.

158. *Schoner v. Schoner*, No. 3:23-cv-382, 2024 WL 3164524 at *1 (S.D. Ohio June 25, 2024).

159. *Id.* at *5.

160. *Id.* at *6.

161. *Abraham v. Samuel*, No. 23-cv-2203, 2024 WL 3091081, at *1 (C.D. Ill. June 20, 2024).

The U.S. District Court for the Northern District of Illinois denied a petitioner father's motion to strike the respondent's grave risk of harm defense as several allegations raised had been adjudicated by an Australian family court.¹⁶² The District Court held that because the Australian court had decided on custody and not an Abduction Convention petition, neither issue preclusion nor comity supported the motion.¹⁶³

The U.S. District Court for the District of Oregon dismissed an Abduction Convention petition based on the fugitive disentitlement doctrine.¹⁶⁴ Despite respondent mother's obtaining from an Oregon state court a Temporary Protective Order of Restraint, containing a *ne exeat* provision, petitioner father took the children to France without the mother's consent.¹⁶⁵ After the mother brought the children back to Oregon, father filed a petition for their return pursuant to the Abduction Convention.¹⁶⁶

iii. *Re>Returns*

A father promptly returned to Israel with his children after a Texas state court granted the father's Abduction Convention petition.¹⁶⁷ The Court of Appeals of Texas reversed the decision and rendered judgment denying the petition for the return of two children to Israel.¹⁶⁸ The trial court ordered that the father surrender the children in Israel after granting the mother's Motion for Enforcement, Clarification, and Re-Return.¹⁶⁹ The Court of Appeals affirmed this decision.¹⁷⁰

iv. *Voluntary Return Orders*

The U.S. District Court for the Middle District of Pennsylvania held that a respondent father, who had agreed to voluntarily return the parties' minor child to Israel, had not established that the District Court retained jurisdiction after the return.¹⁷¹ After petitioner mother filed a return petition pursuant to the Abduction Convention, the parents agreed that they would share joint legal custody of the child, that the child would return to Israel with petitioner mother, and that both parents would cooperate in mirroring the content of the agreement in Pennsylvania and Israel.¹⁷² The District Court entered a Consent Order containing the agreement terms.¹⁷³ Instead of seeking a mirror order in Israel, Mother obtained a

162. Pedersen v. Shriver, No. 23-cv-13836, 2024 WL 3718189, at *7 (N.D. Ill. Aug. 08, 2024).

163. *Id.* at *1.

164. Paris v. Brown (*In re* J.P. & E.P.), No. 1:24-cv-00648-AA, 2024 WL 1701940, at *6 (D. Or. Apr. 19, 2024).

165. *Id.* at *2.

166. *Id.* at *3.

167. *In re* A.H.S. & A.Y.S., 676 S.W.3d 355, 357 (Tex. App.—Tyler 2023) (review denied).

168. *Id.*

169. *Id.* at 358.

170. *Id.* at 367.

171. Saydlin v. Ashby, No. 1:22-cv-00386, 2024 WL 759302, at *7 (M.D. Pa. Feb. 23, 2024).

172. *Id.* at *1.

173. *Id.*

custody order and sought the dismissal of the District Court case.¹⁷⁴ The respondent father was unsuccessful in opposing the motion.¹⁷⁵

v. *Foreign Language Interpreters*

The U.S. Court of Appeals for the Second Circuit did not identify a due process violation when a petitioner did not have a foreign-language interpreter for the first day of an Abduction Convention trial.¹⁷⁶ The petitioner had been advised that it was his obligation to secure an interpreter and about flexibilities concerning the interpreter.¹⁷⁷ Moreover, the District Court arranged for an interpreter on the second day of trial.¹⁷⁸

vi. *Removal to Federal Court*

A Mother removed her children from Italy to California and filed a divorce petition in California state court, seeking custody of the children as well as an order that the father be prohibited from removing the children from California.¹⁷⁹ The Father filed a petition for the return of the children pursuant to the Abduction Convention in the same California court.¹⁸⁰ After the California court issued an *ex parte* order preventing the mother from removing the children from the county in which they were located, the mother sought to remove the father's Abduction Convention action to federal court.¹⁸¹ The U.S. District Court for the Central District of California remanded the case to state court after observing that the mother had asked the state court to address the same issue presented in the return petition.¹⁸²

D. TORTIOUS INTERFERENCE

The Court of Appeals of Illinois declined to recognize a new tort of tortious interference with custodial rights.¹⁸³ A mother, who prevailed in securing her children's return using the Abduction Convention, could not sue the children's grandmother and uncle for assisting the father in the abduction, as the tort does not exist under Illinois law.¹⁸⁴ The Illinois legislature or Supreme Court may establish new causes of action.¹⁸⁵

174. *Id.* at *3.

175. *Id.*

176. *Lomanto v. Agbelusi*, No. 23-993, 2024 WL 3342415, at *4 (2d Cir. July 9, 2024).

177. *Id.*

178. *Id.*

179. *Bichanich v. Sara Young*, No. CV 24-4920 FMO (RAOx), 2024 WL 372831, at *1 (C.D. Cal. Aug. 7, 2024).

180. *Id.*

181. *Id.*

182. *Id.* at *3.

183. *Hulsh v. Hulsh*, 2024 IL App (1st) 221521, 243 N.E.3d 1055, 1057 (App. June 28, 2024).

184. *Id.*

185. *Id.*

VI. Financial Matters

A. RECOGNITION OF FOREIGN CHILD SUPPORT ORDER

After a father appealed a trial court child support order, the California Court of Appeals considered whether the Uniform Interstate Family Support Act (UIFSA) would apply to the recognition of a child support order from China, even where neither party attempted to register that order.¹⁸⁶ The Court concluded that the father did not establish that China would be considered a “[f]oreign country” pursuant to the UIFSA definition.¹⁸⁷

The Supreme Court of Vermont affirmed a family division court order for child support arrears, finding that the family division has discretion regarding currency conversion.¹⁸⁸ The court confirmed that a magistrate may use a different exchange-rate methodology from that used by the state’s Office of Child Support.¹⁸⁹

VII. International Litigation and Judicial Assistance

A. OBTAINING EVIDENCE IN THE UNITED STATES FOR A FOREIGN FAMILY LAW ACTION

The U.S. District Court for the District of Oregon granted the request of Petitioner, United States of America, in its role as Central Authority for the Hague Evidence Convention, pursuant to 28 U.S.C. 1782, to compel a purported father living in Oregon to provide information for use in a local German court paternity action.¹⁹⁰

B. INTERNATIONAL SERVICE OF PROCESS

A husband’s attempts to serve a U.S. district court lawsuit on his wife in Israel were improper as they did not comply with the Hague Service Convention.¹⁹¹ The husband did not use the Central Authority in his service attempts.¹⁹² A process server attempted to serve Wife in person at three separate locations (in an Israeli court, at a home address, and at work).¹⁹³ The husband attempted to serve the wife by postal channels, as Israel had not objected to service by postal channels in

186. Cnty. of Alameda Dep’t of Child Support Servs. v. T.O., No. A166581, 2024 WL 906792, at *9 (Cal. App. Mar. 4, 2024).

187. *Id.*

188. Stone v. Henneke, 2024 VT 26, 319 A.3d 664, 670 (Vt. 2024).

189. *Id.*

190. *In re* Letter of Request from Loc. Ct. in Pankow, Ger., No. 3:24-cv-00682-AR, 2024 WL 1932549, at *1 (D. Or. May 2, 2024).

191. Peled v. Blinken, No. 2:23-cv-2224, 2024 WL 2291962, at *2 (S.D. Ohio May 21, 2024).

192. *Id.*

193. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

328 THE YEAR IN REVIEW

[VOL. 59]

accordance with Article 10(a) of the Convention; however, the Federal Rule of Civil Procedure 4(f)(2)(C)(ii) required the postal mail to be sent from the clerk of court.¹⁹⁴

C. ANTI-SUIT INJUNCTIONS

In an unpublished opinion, the California Court of Appeals affirmed a family court post-judgment order, enforcing a marital settlement agreement, requiring that a husband dismiss with prejudice a divorce action he filed in Iran.¹⁹⁵ The order required that the husband instead cooperate with the wife in registering the U.S. divorce decree in Iran.¹⁹⁶

194. *Id.* at *3.

195. *In re Marriage of Salkhi & Behroyan*, No. A165484, 2023 WL 8430116, at *1 (Cal. Ct. App. Dec. 5, 2023).

196. *Id.*

International Human Rights

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I. Introduction

This article presents highlights of the 2024 developments in international human rights.

II. American Bar Association Resolution on the Establishment of a U.S. National Human Rights Institution

In the August 2024 annual meeting, the House of Delegates of the American Bar Association (ABA) adopted Resolution 512¹, officially stating that the ABA favors the establishment of a National Human Rights Institution (NHRI) for the United States. More importantly, the Resolution (i) empowers the ABA's advocacy arm, the Government Affairs Office, to lobby Congress urging it to create an NHRI, (ii) enables the ABA President to issue public statements and write letters in support of this effort, and (iii) enables the ABA's International Human Rights Committee and other ABA groups to join a coalition of non-governmental organizations (NGOs)—including the ACLU, the Center for Reproductive Rights and the Southern Poverty Law Center, that has been advocating for an NHRI through Congressional and Executive Branch briefings.²

* The Committee Editor is Constance Z. Wagner, Professor, Saint Louis University School of Law. Daniel L. Appelman, Senior Adviser, American Bar Association, International Human Rights Committee, wrote Section II. Carlos de Miguel Perales, Professor, Faculty of Law (ICADE), Comillas University, Madrid, Spain, wrote Section III. Alexander Ehrle, Associate, Baker McKenzie, wrote Section IVA, IVB, and IVC. Austin J. Pierce, Associate, Latham & Watkins, wrote Section IVD and IVE. Constance Z. Wagner, Professor, Saint Louis University School of Law, wrote Section IVF. Sara Sandford, Senior Adviser, American Bar Association, International Human Rights Committee, Mediator, Benchmark International ADR, wrote Section V. Linda S. Murnane, Colonel, United States Air Force (ret.) and Wendy Taube, Principal, Taube Law, LLC, wrote Section VI. Elizabeth M. Zechenter, Visiting Professor, Warsaw University, Visiting Scholar, Emory University College of Arts and Sciences, wrote Section VII.

1. ABA House of Delegates, Resolution 512 (2024).

2. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

330 THE YEAR IN REVIEW

[VOL. 59]

NHRIs are government-created but independently governed institutions that monitor the home state's implementation of and adherence to international human rights obligations and standards.³ NHRIs monitor governments' compliance with international human rights laws.⁴ In addition, they educate the public on the existence of these laws and the rights of its citizens thereunder.⁵ They raise public awareness of non-compliance issues and provide fora for civil society to hold governments accountable in the event of a breach of their obligations.⁶

Over 130 states have NHRIs, but the United States is an outlier⁷, alongside Russia and China. Several United Nations (UN) bodies have repeatedly called out the United States for its failure to create and fund a U.S. NHRI.⁸

This is important because the United States has serious human rights non-compliance issues.⁹ It has come under increasing international scrutiny for incidents of racial violence and police brutality; legislation and judicial decisions interfering with reproductive rights and voting rights; lack of clear constitutional guarantees against sex- and gender-based discrimination; the persistence of domestic and sexual violence against women, particularly women from marginalized communities; and disparities of treatment within its criminal justice system.¹⁰

These are issues that bear on the government's obligation to respect and implement human rights under international law.¹¹ Although the United States has many institutional mechanisms to protect civil liberties, there are neither independent domestic institutions responsible for public education nor pro-active implementation of international human rights standards.¹²

State and local government human rights institutions need coordination through federal leadership. Many U.S. cities have established their own human rights institutions and commissions which address issues including racial justice, disability rights, and other local concerns.¹³ But the obligation to comply with

3. Office of the U.N. High Comm'n for Hum. Rts. (OHCHR), *National Human Rights Institutions History, Principles, Roles and Responsibilities*, 13 (Oct. 2010).

4. *Id.*

5. *Id.* at 21.

6. *Id.*

7. See, e.g., Glob. All. of Nat'l Hum. Rts. Insts. (GANHRI), *Membership*, <https://ganhri.org/membership> [<https://perma.cc/V79V-G2ZL>] (last visited Apr. 13, 2025).

8. Office of the U.N. High Comm'r for Hum. Rts. (OHCHR), CCPR/C/USA/CO/5: *Concluding Observations on the Fifth Periodic Report of the United States of America*, ¶ 4, 6 (Dec. 7, 2023), <https://www.ohchr.org/en/documents/concluding-observations/ccprcusaco5-concluding-observations-fifth-periodic-report-united> [<https://perma.cc/84Z4-7TXA>].

9. *Id.* ¶ 8.

10. *Id.* ¶ 26.

11. See *id.*

12. Martha F. Davis, *Institutionalizing Human Rights in the United States: Advocacy for a National Human Rights Institution*, 23 J. HUM. RTS. 134, 135 (2024).

13. See Prisca Tarimo, *Achievement and Challenges of Human Rights Commissions in US Cities*, BOSTON HUM. RTS. COMM'N (July 11, 2021), <https://www.boston.gov/sites/default/files/file/2022/03/Achievements-Challenges-Human-Rights-Commissioners-US-cities.pdf> [<https://perma.cc/5DZA-85AX>]; HRCBs *Executive Summary*, CITY OF LARAMIE, WYOMING,

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

HUMAN RIGHTS 331

international human rights treaties is primarily the responsibility of national governments, not subnational entities.¹⁴ Without an NHRI at the national level, state and local human rights commissions and non-governmental organizations largely function autonomously.¹⁵ A U.S. NHRI could coordinate information and activities and serve as a focal point for subnational entities to participate in international human rights fora.¹⁶

The United States' failure to establish its own NHRI diminishes its credibility in advocating for human rights abroad.¹⁷ Many branches of the federal government, including the State Department, have budgets devoted to monitoring human rights compliance (and lack thereof) by other countries.¹⁸ The United States has come under increasing scrutiny for its criticism of other countries' deplorable human rights records.¹⁹ At the same time, it has failed to establish a domestic institution to monitor its compliance with international human rights obligations.²⁰ Some nations view this as hypocrisy while others perceive such failure diminishing U.S. credibility when speaking out bi-nationally and internationally on human rights.²¹

A U.S. NHRI must comply with the Paris Principles, a set of international standards adopted by the United Nations General Assembly in 1993, to be considered credible and effective.²² Compliance with the Paris Principles is the key requirement of the accreditation process that regulates NHRI access to the United Nations Human Rights Council and other bodies.²³ The requirements are as follows:

- (i) The NHRI should be established under national legislation or the Constitution and have a broad mandate to promote and protect human rights;
- (ii) It must be formally and functionally independent from the government;
- (iii) Its composition should represent all aspects of society to ensure diverse perspectives;
- (iv) It must have sufficient resources and financial autonomy to operate effectively;

<https://cityoflarame.org/AgendaCenter/ViewFile/Item/16441?fileID=23926>
[<https://perma.cc/AXF3-GX8Y>] (last visited April 12, 2025).

14. See Tarimo, *supra* note 13.

15. See *id.*

16. See *id.*

17. See William Jaffe, *United States' Human Rights Record Criticized by the UN*, PHYSICIAN FOR HUM. RTS. (Nov. 29, 2023), <https://phr.org/our-work/resources/united-states-human-rights-record-criticized-by-international-community> [<https://perma.cc/YR47-A5V4>].

18. See U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., *2023 Country Reports on Human Rights Practices* (2024).

19. Yu Ning, *US Human Rights Situation Deserves International Scrutiny*, GLOB. TIMES (June 18, 2020), <https://www.globaltimes.cn/page/202006/1192114.shtml> [<https://perma.cc/59A2-SD68>].

20. See Jaffe, *supra* note 17.

21. Anna Malindog-Uy, *Human Rights: US' Double Standards, Hypocrisy*, ASEAN POST (Apr. 17, 2022), <https://theaseanpost.com/opinion/2022/apr/17/human-rights-us-double-standards-hypocrisy> [<https://perma.cc/ZPG9-AQWV>].

22. See generally G.A. Res. 48/134, ¶ 3, U.N. Doc. A/RES/48/134 (Dec. 20, 1993).

23. See *id.*

- (v) It should have the freedom to address any human rights issues arising within the United States;
- (vi) It must report annually to the government;
- (vii) It should cooperate with national and international actors, including civil society and other human rights organizations.²⁴

Resolution 512, adopted by the ABA, along with the coalition of NGOs that the ABA joined by adopting the resolution, calls upon the U.S. President to establish a commission of experts to study the creation and funding of an NHRI and make recommendations to Congress accordingly.²⁵ Given the results of the 2024 federal election, this article argues that neither are expected to happen soon. Nevertheless, this article argues that the ABA's continued advocacy and participation in the coalition will maintain the need for a U.S. NHRI on the national human rights agenda.

III. Climate Change and Human Rights Litigation in Europe

In 2024, climate change litigation in Europe related to human rights has continued to advance. On April 9, 2024, the European Court of Human Rights (ECtHR) issued its judgment on *Verein KlimaSeniorinnen Schweiz v. Switzerland*.²⁶ In addition, the ECtHR issued its decisions on *Carême v. France* and *Duarte Agostinho v. Portugal*.²⁷ Based on these recent developments, more cases concerning climate change and human rights are expected to arise in Europe.

In *Verein KlimaSeniorinnen Schweiz* (application no. 53600/20), the applicants were KlimaSeniorinnen Schweiz, a Swiss association whose membership included more than 2,000 older women, one-third of whom were over seventy-five, and four of whom aged over eighty.²⁸ The defendant was Switzerland.²⁹ In its judgment, the ECtHR held by a majority of sixteen votes to one that there had been a violation of Article 8 (right to respect for private and family life)³⁰ of the European

24. See *id.*

25. ABA House of Delegates, Resolution 512 (2024).

26. *Grand Chamber Rulings in the Climate Change Cases*, EUR. CT. H.R. (Sept. 4, 2024), <https://www.echr.coe.int/w/grand-chamber-rulings-in-the-climate-change-cases> [https://perma.cc/6JHS-QFDA].

27. *Id.*

28. See *Verein KlimaSeniorinnen Schweiz v. Switzerland*, App. No. 53600/20, Eur. Ct. H.R., 11 (2024).

29. *Id.* at 8.

30. *Id.* at 230; EUROPEAN CONVENTION ON HUMAN RIGHTS, COUNCIL OF EUROPE 5, https://www.echr.coe.int/documents/d/echr/Convention_ENG [https://perma.cc/B726-LYX3]. Article 8:

Right to respect for private and family life. 1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Id.

Convention on Human Rights (ECHR) and, unanimously, a violation of Article 6.1 of the ECHR (right to access to court).³¹

The judgment is noteworthy for several reasons. It is 232 pages long, plus a partly dissenting opinion demonstrating the complexity of the matter and the numerous aspects addressed in the decision.³²

To begin, *Verein KlimaSeniorinnen Schweiz* is the first judgment of the ECtHR on climate change and human rights.³³ In its prior rulings, the ECtHR had also found a link between Article 8 ECHR and environmental impacts.³⁴ But in this case, the link is specifically acknowledged in the context of climate change.³⁵ As per the judgment, Article 8 also encompasses a right to effective protection by the State against the serious adverse effects of climate change on lives, health, well-being, and quality of life.³⁶

The second important aspect of the judgment relates to legal standing. On the one hand, the ECtHR considered that the four individual applicants did not fulfil the victim-status criteria under Article 34 of the ECHR,³⁷ thus declaring their complaints inadmissible. The applicants failed to demonstrate that they were personally and directly affected by governmental action or inaction based on the two criteria set by the ECtHR: the high intensity of their exposure to the adverse effects of climate change, and the pressing need to ensure their protection.³⁸ The ECtHR elucidated that the ECHR does not recognize the right to lodge a claim in the public

31. *Verein KlimaSeniorinnen Schweiz*, App. No. 53600/20, Eur. Ct. H.R. at 231; EUROPEAN CONVENTION ON HUMAN RIGHTS, *supra* note 30 at 231. Article 6.1:

Right to a fair trial. 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

Id.

32. *Verein KlimaSeniorinnen Schweiz*, App. No. 53600/20, Eur. Ct. H.R. at 232.

33. *See id.*

34. *See, e.g., López Ostra v. Spain*, App. No. 16798/90, Eur. Ct. H.R. (1994).

35. *Verein KlimaSeniorinnen Schweiz*, App. No. 53600/20, Eur. Ct. H.R. at 144.

36. *Id.* at 203; EUROPEAN CONVENTION ON HUMAN RIGHTS, *supra* note 30, at art. 8.

37. *Verein KlimaSeniorinnen Schweiz*, App. No. 53600/20, Eur. Ct. H.R. at 21; EUROPEAN CONVENTION ON HUMAN RIGHTS, *supra* note 30. Article 34:

Individual applications The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

Id.

38. *Verein KlimaSeniorinnen Schweiz*, App. No. 53600/20, Eur. Ct. H.R. at 186–87.

or general interest if the impugned measure or act does not affect the applicant directly (the so-called *actio popularis*).³⁹

On the other hand, however, the ECtHR found that the fifth applicant, the association, did have *locus standi* to complain on behalf of those individuals who could claim to be subject to specific threats or adverse effects of climate change.⁴⁰ The judgment set the conditions for an association to have *locus standi* in such cases, if the association is:

(a) lawfully established in the jurisdiction concerned or has standing to act there; (b) able to demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those rights against the threats arising from climate change; and (c) able to demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the ECHR.⁴¹

In 2024 the ECtHR also issued judgments in *Carême v. France* (application no. 7189/21) and *Duarte Agostinho v. Portugal* (application no. 39371/20).⁴² In both cases, the ECtHR declared the applications inadmissible.⁴³

In *Duarte Agostinho* the applicants were six young Portuguese citizens, who complained about the existing and serious future impacts of climate change.⁴⁴ The applicants claimed the responsibility of Portugal and the thirty-two other respondent States.⁴⁵ The applications were declared inadmissible for (i) non-exhaustion of domestic remedies in Portugal, and (ii) lack of territorial jurisdiction in respect of the other thirty-two respondent States.⁴⁶

In *Carême*, the applicant, a former resident and mayor of the Grande-Synthe municipality, complained that France had taken insufficient steps to prevent climate change.⁴⁷ The ECtHR considered that the applicant could not claim victim status under Article 34 ECHR, given that he had no relevant links with Grande-Synthe and, moreover, he did not live in France at the time.⁴⁸

39. *Id.* at 243.

40. *Id.* at 199.

41. *Id.* at 191.

42. See *Carême v. France*, No. 7189/21, Eur. Ct. H.R. (2024); *Duarte Agostinho v. Portugal*, No. 39371/20, Eur. Ct. H.R. (2024).

43. See *Carême*, No. 7189/21, Eur. Ct. H.R. ¶¶ 75–76; see also *Duarte Agostinho v. Portugal*, No. 39371/20, Eur. Ct. H.R. ¶ 230 (2024).

44. *Duarte Agostinho*, No. 39371/20, Eur. Ct. H.R. ¶ 1 (2024).

45. *Id.* ¶ 13.

46. *Id.* ¶¶ 179, 230.

47. See *Carême*, No. 7189/21, Eur. Ct. H.R. ¶ 11.

48. *Id.* ¶¶ 76, 83.

IV. Developments on Sustainability Reporting, Human Rights Due Diligence, and Responsible Supply Chain Sourcing in the European Union and the United States

The European Union (EU) is actively reshaping its ESG (Environmental, Social, and Governance) landscape with several key regulatory frameworks, including the Corporate Sustainability Due Diligence Directive (CSDDD), the Corporate Sustainability Reporting Directive, the EU Forced Labour Regulation, and the EU Deforestation Regulation.⁴⁹ These initiatives demonstrate the EU's commitment to enhancing corporate accountability and transparency in sustainability practices. As part of the European Green Deal, these initiatives aim to strengthen corporate accountability and transparency regarding sustainability practices, aligning with the Green Deal's objectives to achieve net-zero greenhouse gas emissions by 2050.⁵⁰ To a lesser extent, the United States has also introduced ESG regulatory initiatives.

A. EU CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE (CSDDD)

The CSDDD covers EU and third-country-based companies, in case certain employee and turnover thresholds are met.⁵¹ The CSDDD mandates that large EU and non-EU companies operating within the EU implement human rights and environmental due diligence throughout their supply chains.⁵² It aims to foster sustainable development by requiring companies to identify, prevent, and mitigate the adverse effects of their operations, subsidiaries, and business partners on human rights and the environment.⁵³

The CSDDD was adopted on July 5, 2024, following the German Supply Chain Due Diligence Act (LkSG), which already came into effect in 2023.⁵⁴ But the CSDDD is broader in scope than the LkSG; unlike the LkSG, the CSDDD imposes no turnover threshold, applies only to companies with at least 1,000 employees

49. See Regulation 2024/3015, of the European Parliament and of the Council of 27 Nov. 2024 on Prohibiting Products Made with Forced Labour on the Union Market and Amending Directive 2019/1937, 2024 O.J. (L 3015) 1 (EU); Directive 2022/2464, of the European Parliament and of the Council of 14 Dec. 2022, Amending Regulation 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, As Regards Corporate Sustainability Reporting, 2022 O.J. (L 322) 15 (EU); Directive 2024/1760, of the European Parliament and of the Council of 13 June 2024 on Corporate Sustainability Due Diligence and Amending Directive 2019/1937 and Regulation 2023/2859, 2024 O.J. (L 1760) (EU).

50. *Corporate Sustainability Due Diligence*, EUROPEAN COMM'N, https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en [https://perma.cc/BZ27-LYPN] (last visited April 15, 2025).

51. Directive 2024/1760, of the European Parliament and of the Council of 13 June 2024 on Corporate Sustainability Due Diligence and Amending Directive 2019/1937 and Regulation 2023/2859, 2024 O.J. (L 1760) ¶ 27 (EU).

52. *Id.* ¶ 52.

53. See *id.*

54. *Bridging the LkSG and CSDDD: Key Similarities and Differences in the Path to the EU Supply Chain Act*, MHP (April 5, 2024), <https://www.mhp.com/en/insights/blog/post/lksg-vs-csddd> [https://perma.cc/MLP8-Q9TL].

from January 1, 2024, and introduces a requirement for a net worldwide of €450 million.⁵⁵ In addition, the CSDDD applies to the entire chain of activities of entities in scope.⁵⁶ This means that the due diligence obligations apply not only to a company's own operations but also to those of its upstream and specific downstream business partners.

The German LkSG has already seen its first significant enforcement cases filed by the German enforcement authority BAFA (Bundesamt für Wirtschaft und Ausfuhrkontrolle) involving different industries, including the automobile sector.⁵⁷ Interestingly, earlier this year, the German LkSG was invoked by U.S. workers at a Mercedes-Benz factory in Alabama, who claimed that their right to form a union under the German LkSG had been violated, thus bringing U.S. labor laws and practices under the scrutiny of EU and German business and human rights legislation.⁵⁸

B. EU CORPORATE SUSTAINABILITY REPORTING DIRECTIVE (CSRD)

The CSRD entered into force on January 5, 2024, significantly expanding the non-financial reporting obligations of companies within and outside of the EU based on specific EU thresholds.⁵⁹ Companies are now required to report comprehensively on their ESG impact from a double-materiality perspective and discuss how specific ESG issues may impact their business and vice-versa, based on over 1,000 data points defined by the European Sustainability Reporting Standards (ESRS).⁶⁰

The CSRD was required to be transposed into the national laws of the EU member states by July 6, 2024.⁶¹ Because seventeen member states missed the statutory deadline for its transposition⁶², the European Commission initiated infringement procedures against each of them sequentially.⁶³

55. *Id.*

56. *Id.*

57. Rekha Kumari, *Enforcement Mechanisms of the German Supply Chain Due Diligence Act (LkSG)*, SEDEX (Oct. 2, 2024), <https://www.sedex.com/blog/enforcement-mechanisms-of-the-german-supply-chain-due-diligence-act-lksg> [<https://perma.cc/XGR9-6GKZ>].

58. See *Mercedes-Benz Rejects 'Anti-Union' Allegations After US Union Complaints*, REUTERS (Apr. 3, 2024), <https://www.reuters.com/business/autos-transportation/mercedes-benz-rejects-anti-union-allegations-after-us-union-complaints-2024-04-03> [<https://perma.cc/3HF4-4T8H>].

59. *Corporate Sustainability Reporting*, EUR. COMM'N, https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en [<https://perma.cc/E6PS-ZPA3>] (last visited April 15, 2025).

60. See *id.*

61. See *id.*

62. Mary Foley, *Europe Focuses on Next Stages of CSRD Implementation*, FORBES (Aug. 30, 2024), <https://www.forbes.com/sites/maryfoley/2024/08/30/europe-focuses-on-next-stages-of-csrd-implementation> [<https://perma.cc/79S9-GVDB>].

63. See European Commission, INF/24/3869 (July 25, 2024).

C. EU FORCED LABOR REGULATION (EUFLR)

The EUFLR received its final approval by the European Parliament on April 23, 2024, and is pending approval from the Council of the EU, representing the EU Member States, before it can enter into force.⁶⁴ Its exact adoption date is currently uncertain.

The EUFLR adopts a product regulatory approach to combat forced labor, prohibiting the sale, import, and export of goods produced by forced labor.⁶⁵ It defines forced labor as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”⁶⁶ The regulation applies regardless of where in the supply chain forced labor occurs—whether in manufacturing, harvesting, extraction, or any related processing activities of the product itself or its components.⁶⁷ Any products made with forced labor, whether fully or partially, will be banned from the EU market, regardless of the business sector they belong to and their origin.⁶⁸

The EUFLR complements the CSDDD and reinforces the commitment to prevent companies operating within or trading with the EU from inadvertently supporting forced labor.⁶⁹ Both the CSDDD and the EUFLR extend corporate responsibilities across the entire supply chain, recognizing that forced labor predominantly occurs in the private sector.⁷⁰

Nonetheless, the EUFLR takes a different approach when it comes to enforcement mechanisms.⁷¹ It establishes a framework that blocks non-compliant products entirely from the EU market, unlike the CSDDD, which grants comprehensive investigative powers to the competent authorities.⁷²

D. EU DEFORESTATION REGULATION (EUDR)

The EUDR specifically targets certain goods and commodities that have a higher risk of being linked to deforestation.⁷³ The EUDR generally requires parties importing a selection of commodities—cattle, cocoa, coffee, oil palm, rubber, soy, and

64. Julia Voskoboinikova & Sara Feijao, *EU: Parliament Gives Final Approval to Forced Labour Ban*, LINKLATERS (Apr. 24, 2024), <https://sustainablefutures.linklaters.com/post/102j64o/eu-parliament-gives-final-approval-to-forced-labour-ban> [https://perma.cc/A6FM-Q76X].

65. Regulation 2024/3015, of the European Parliament and of the Council of 27 November 2024 on Prohibiting Products Made with Forced Labour on the Union Market and Amending Directive (EU) 2019/1937, 2024 O.J. (L 32024R3015) ¶ 19.

66. *Id.*

67. *Id.* ¶ 18.

68. *Id.*

69. See *id.* ¶ 4.

70. *Id.* ¶ 2.

71. Regulation (EU) 2023/1115, of the European Parliament and of the Council of 31 May 2023 on the Making Available on the Union Market and the Export from the Union of Certain Commodities and Products Associated with Deforestation and Forest Degradation and Repealing Regulation 995/2010, 2023 O.J. (L 150) art. 14–19.

72. *Id.* art. 14.

73. See Regulation 2023/1115, *supra* note 71.

wood—or certain products derived therefrom to confirm that the goods are (i) deforestation-free (meaning that the relevant commodity was not harvested from land that was deforested after 31 December 2020); and (ii) produced in accordance with relevant legislation (including human and Indigenous rights considerations) for the country of production, as well as file a diligence statement to that effect, before marketing or selling the products in the EU (or exporting products from the EU).⁷⁴

The diligence requirements under the EUDR are relatively extensive. They generally include detailed production information (including geolocation data), a risk assessment assessing factors ranging from forest coverage to supply chain complexity, and risk mitigation measures to achieve no greater than a negligible risk of non-compliance based on the risk assessments conducted.⁷⁵ Collecting sufficient information can require substantial effort, particularly for companies with multiple suppliers or lengthy or complex supply chains.⁷⁶

Recognizing this challenge, various companies and certain governments called on the EU to delay the implementation of the law, which was initially scheduled to take effect by December 30, 2024.⁷⁷ EU policymakers were initially resistant to the idea; therefore, a proposal was introduced to postpone the requirements by one year in October 2024.⁷⁸ The proposal was approved by the EU Council, but upon being passed to the EU Parliament, it was voted to introduce further procedural and substantive amendments to the EUDR.⁷⁹ As of November 15, 2024, such amendments had not been approved by the EU Council and EU Commission.⁸⁰

E. U.S. UYGHUR FORCED LABOR PREVENTION ACT (UFLPA)

In the United States, the Uyghur Force Labor Prevention Act (UFLPA) was adopted in 2021 to establish a presumption that goods produced from the Xinjiang Uyghur Autonomous Region or certain designated entities in whole or in part have been made with forced labor, and are therefore ineligible to import into the United States.⁸¹ The UFLPA requires regulators to maintain a list of high-priority sectors for enforcement and provides several initial sectors for mandatory inclusion.⁸² But in July 2024, the Forced Labor Enforcement Task Force added three more sectors

74. *Id.* ¶ 8.

75. *Id.* art. 29.

76. *See id.* ¶ 49.

77. *See* Press Release, Council of the EU, Council Adopts Directive to Delay Reporting Obligations for Certain Sectors and Third Country Companies (Apr. 29, 2024), <https://www.consilium.europa.eu/en/press/press-releases/2024/04/29/council-adopts-directive-to-delay-reporting-obligations-for-certain-sectors-and-third-country-companies> [<https://perma.cc/XV3A-ZMN3>].

78. *Deforestation Regulation: Provisions Relating to the Date of Application*, at 3, COM (2024) 452 first reading (Nov. 14, 2024).

79. *See id.*

80. *See id.*

81. Pub. L. No. 117-78, § 1, 135 Stat. 1525 (2021).

82. *Id.* § 2(d)(2)(B)(viii).

to the high-priority list: aluminum, polyvinyl chloride, and seafood.⁸³ This demonstrates regulators' continued scrutiny of forced labor concerns in companies' supply chains.

F. U.S. SUSTAINABILITY REPORTING INITIATIVES

The United States is far behind the EU when it comes to mandatory sustainability reporting initiatives.⁸⁴ But noteworthy developments have taken place in 2024 at the federal and state levels, requiring corporate disclosure of climate-related risks and greenhouse gas emissions.⁸⁵

On March 6, 2024, the Securities and Exchange Commission (SEC) adopted final rules mandating climate-related disclosures in public companies' annual reports and registration statements.⁸⁶ These rules aim to "respond to investors' demand for more consistent, comparable, and reliable information about the financial effects of climate-related risks on a registrant's operations and how it manages those risks while balancing concerns about mitigating the associated costs of the rules."⁸⁷ The rules significantly expand the reporting obligations of public companies concerning climate risk and greenhouse gas emissions.⁸⁸

Multiple parties, including the U.S. Chamber of Commerce and nineteen states, filed lawsuits challenging the rules, which were consolidated in the U.S. Court of Appeals for the Eighth Circuit.⁸⁹ The suits challenged the SEC's statutory authority and its compliance with the Administrative Procedure Act and also raised a First Amendment claim.⁹⁰ The SEC issued a stay of the final rules on April 4, 2024, pending judicial review by the Eighth Circuit.⁹¹ The future of the final rules remains uncertain.⁹²

At the state level, several states, including California, New York, and Minnesota, have enacted or are considering legislation mandating climate risk and greenhouse

83. *Forced Labor Enforcement Task Force Adds Aluminum, PVC, and Seafood as New High Priority Sectors for Enforcement of Uyghur Forced Labor Prevention Act*, U.S. DEP'T OF HOMELAND SEC. [DHS] (July 9, 2024), <https://www.dhs.gov/archive/news/2024/07/09/forced-labor-enforcement-task-force-adds-aluminum-pvc-and-seafood-new-high-priority> [<https://perma.cc/BEC4-UFHH>].

84. See discussion *infra* Sections IV.A.–F.

85. See *id.*

86. *SEC Adopts Rules to Enhance and Standardize Climate-Related Disclosures for Investors*, SEC. EXCH. COMM'N [SEC] (Mar. 6, 2024), <https://www.sec.gov/newsroom/press-releases/2024-31> [<https://perma.cc/B6WG-NLQE>].

87. *Id.*

88. *Id.*

89. *SEC Stays Its Climate Rule; But Do Not Put Your Pencils Down*, COVINGTON & BURLING (Apr. 16, 2024), <https://www.cov.com/en/news-and-insights/insights/2024/04/sec-stays-its-climate-rule-but-do-not-put-your-pencils-down> [<https://perma.cc/JV7K-MVAS>].

90. David A. Bell et al., *SEC Files Brief in Support of Climate Disclosure Rules*, HARVARD L. SCH. F. ON CORP. GOVERNANCE (Sept. 1, 2024), <https://corpgov.law.harvard.edu/2024/09/01/sec-files-brief-in-support-of-climate-disclosure-rules/#> [<https://perma.cc/H4XX-HDPL>].

91. COVINGTON & BURLING, *supra* note 89.

92. See *id.*

gas emissions disclosure.⁹³ In California, which was the first state to enact such legislation, two bills were signed into law in 2023: the Climate Corporate Data Accountability Act (SB 253)⁹⁴ and the Climate-Related Financial Risk Act (SB 261).⁹⁵ SB 253 requires that covered companies, defined as businesses either organized under California law or doing business in California that have more than one billion U.S. dollars of annual revenue, make annual disclosures of three levels of greenhouse gas emissions.⁹⁶ SB 261 requires that covered companies, defined as businesses either organized under California law or any other state or an act of Congress doing business in California with more than five hundred million U.S. dollars of annual revenue, make biennial disclosures about their climate-related financial risk.⁹⁷ It is projected that these new disclosure requirements will have considerable reach, with one source estimating that at least seventy-five percent of Fortune 1,000 companies are covered by SB 253, while seventy-three percent are covered by both SB 253 and SB 261.⁹⁸ To implement these laws, the California Air Resources Board (CARB) was directed to enact regulations regarding disclosure procedures in 2024, with a deadline of January 1, 2025.⁹⁹ On January 31, 2024, the U.S. Chamber of Commerce, the California Chamber of Commerce, and other business groups filed a lawsuit against the State of California and CARB, alleging that SB 253 and SB 261 violated the U.S. Constitution.¹⁰⁰ But on November 5, 2024, the U.S. District Court for the Central District of California denied the plaintiffs' motion for summary judgment, leaving the viability of the California legislation as a distinct possibility.¹⁰¹

V. Attacks on Human Rights Defenders

Margaret Satterthwaite, the United Nations Special Rapporteur on the independence of judges and lawyers, recently reported that attacks on lawyers, prosecutors,

93. Maureen Gorsen & Evan Grosch, *States Forge Ahead on Climate Disclosures as SEC's Plan Drags On*, BLOOMBERG L. (May 23, 2024), <https://news.bloomberglaw.com/us-law-week/states-forge-ahead-on-climate-disclosures-as-secs-plan-drags-on> [https://perma.cc/3GJY-GJN2].

94. See generally Climate Corporate Data Accountability Act (2023), <https://legiscan.com/CA/text/SB253/id/2844397> [https://perma.cc/A4BD-LCAG] (last visited May 13, 2025).

95. See generally Greenhouse Gases: Climate-Related Financial Risk Act (2023), <https://legiscan.com/CA/text/SB261/2023> [https://perma.cc/GYC7-UDXT] (last visited May 13, 2025).

96. Climate Corporate Data Accountability Act § 2(a)(2)–2(c) (2023), <https://legiscan.com/CA/text/SB253/id/2844397> [https://perma.cc/A4BD-LCAG] (last visited May 13, 2025).

97. Greenhouse Gases: Climate-Related Financial Risk Act § 2(a)(4)–2(b) (2023), <https://legiscan.com/CA/text/SB261/2023> [https://perma.cc/GYC7-UDXT] (last visited May 13, 2025).

98. Sadie Frank, *How Might California's New Climate Disclosure Law Impact Federal Rulemaking?*, PUB. CITIZEN (Oct. 26, 2023), <https://www.citizen.org/article/california-sec-climate-disclosure-report> [https://perma.cc/LS8H-PPQH].

99. Leah Malone et al., *Preparing for California's Climate Disclosure Laws*, SIMPSON THACHER (Sept. 30, 2024), https://www.stblaw.com/docs/default-source/Publications/esg-alert_09_30_24 [https://perma.cc/67J6-8AF9].

100. Chamber of Com. of U.S. v. Cal. Air Res. Bd., No. 2:24-cv-00801-ODW (PVCx), 2024 U.S. Dist. LEXIS 201388, *2 (C.D. Cal. Nov. 5, 2024).

101. *Id.* at *8.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

HUMAN RIGHTS 341

judges, and community justice workers continue.¹⁰² Such attacks take the form of government disparagement and harmful labeling, harassment and threats, arbitrary detention, torture, enforced disappearance, physical attacks, and assassinations.¹⁰³ Families and those witnessing such attacks are affected, as well.¹⁰⁴ Such attacks occur in many countries, including the United States, Philippines, Mexico, Poland, Israel, United Kingdom, Romania, Guatemala, Russia, Lebanon, Pakistan, Venezuela, Colombia, and Egypt.¹⁰⁵

In this climate, the ABA International Law Section's International Human Rights Committee continues its program series to educate ABA members and the broader legal community about the attacks and the threat they pose to access to justice and the rule of law.¹⁰⁶ One such program was held on May 15, 2024, regarding the situation in the Philippines.¹⁰⁷ In that program, Carlos Conde, a Senior Researcher at Human Rights Watch, discussed President Bongbong Marcos's recent attempt to block the United Nations Joint Program (UNJP) inquiry into the abuses committed during the Duterte administration's so-called "war on drugs," which involved numerous human rights defenders' assassinations.¹⁰⁸ The UNJP was replaced by the Special Committee on Human Rights Coordination (commonly known as the Superbody), which was supposed to promote and protect human rights in the Philippines,¹⁰⁹ but the Committee has been criticized for its ineffectiveness by many.¹¹⁰ Mr. Conde highlighted the Marcos administration's lack of intention to cooperate with the International Criminal Court's investigation of human rights abuses in the Philippines.¹¹¹ He further pointed out that many trading partners failed to impose trade sanctions in response to the Duterte administration's conduct, which he argued enabled the killings to continue with impunity.¹¹²

Neri Colmenares, a former legislator, a human rights lawyer, and an activist who is the President of the National Union of Peoples' Lawyers in the Philippines, similarly shared concerning statistics about the ongoing attacks on lawyers, judges, and

102. See Margaret Satterthwaite (Special Rapporteur on the Independence of Judges and Lawyers), *Safeguarding the Independence of Judicial Systems in the Face of Contemporary Challenges to Democracy*, U.N. Doc. A/HRC/56/62 (June 21, 2024), <https://docs.un.org/en/A/HRC/56/62> [<https://perma.cc/P7H4-RF9R>].

103. *Id.* at 56–65.

104. See *id.*

105. *Id.* at 57–61.

106. See *Human Rights Defenders*, AM. BAR ASS'N, https://www.americanbar.org/groups/international_law/about/committees/human-rights/human-rights-defenders [<https://perma.cc/3MY4-AZ84>] (last visited April 29, 2025).

107. See ABA INT'L, *Challenges Facing Judges, Lawyers and Other Human Rights Defenders in the Philippines*, YOUTUBE (May 15, 2024), <https://www.youtube.com/watch?v=Dc4PDnyul1A> [<https://perma.cc/D86S-T28S>].

108. *Id.*

109. Satur C. Ocampo, *Rights 'Superbody' Needs Monitoring*, PHILSTAR (May 18, 2024), <https://www.philstar.com/opinion/2024/05/18/2355915/rights-superbody-needs-monitoring> [<https://perma.cc/4LY8-LWE7>].

110. ABA INT'L, *supra* note 107.

111. *Id.*

112. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

342 THE YEAR IN REVIEW

[VOL. 59]

other human rights defenders.¹¹³ He also spoke of current trends, including “red tagging,” i.e., labeling people as communists, which pose a serious threat to such individuals given the government’s efforts to have the communist party declared to be a terrorist organization.¹¹⁴ He urged organizations like the ABA and individuals to keep raising these issues with the international community, promoting fact-finding missions, and strengthening solidarity with lawyers’ groups involved in monitoring and investigating these ongoing attacks.¹¹⁵

Former Dean of the De La Salle University College of Law, professor, and human rights attorney with the Free Legal Assistance Group, Jose Manuel (Chel) Diokno, suggested that President Marcos’s formation of the human rights superbody using identical language to that of the UNJP was an effort to gain Philippine membership on the United Nations Security Council.¹¹⁶ Professor Diokno went on to say that it is a serious problem for society when even one person is killed or attacked for standing up for human rights and the rule of law.¹¹⁷ Hence, he is not troubled by the difficulty of obtaining reliable statistics on the extent of such attacks.¹¹⁸ “Attacks of this nature,” he stated, not only impact the victims and their loved ones but also all those who hold back from speaking up due to the fear that they or their loved ones will be at risk.¹¹⁹ He stated that currently the Philippines is considered to be the most dangerous country for land and environmental defenders.¹²⁰

Professor Diokno hopes that lawyers will continue to defend human rights and access to justice, and he found promise in the participation of many law students in U.S. legal clinics working on such issues.¹²¹ He remains concerned, however, as little has changed within the Philippines government to ensure the protection of such rights and the ending of the killings.¹²²

Finally, former Philippines Senator Leila De Lima spoke, recounting her own story to becoming a human rights lawyer.¹²³ She shared her experience of being arrested and imprisoned for six years, eight months and twenty-one days on trumped-up charges, simply for doing her job as the Senate Justice Committee Chair leading the Senate inquiry into the murders committed as part of the Duterte government’s “war on drugs.”¹²⁴ These occurred after she endured months of

113. *Id.*

114. *Id.*

115. *Id.*

116. ABA INT’L, *supra* note 107.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. ABA INT’L, *supra* note 107.

123. *Id.*; see Kathleen Magramo, *Philippine Court Clears Fierce Duterte Critic of Drugs Charges after Long Legal Battle and Six Years of Police Custody*, CNN (June 24, 2024, 5:23 AM), <https://www.cnn.com/2024/06/24/asia/philippines-leila-de-lima-acquitted-intl-hnk/index.html> [https://perma.cc/DK76-RBJT].

124. ABA INT’L, *supra* note 107; Margaret Simons, *Shades of Democracy: Former Philippines Senator Leila de Lima, Imprisoned for Nearly Seven Years During Rodrigo Duterte’s “War on Drugs,” On Her Hopes*

political attacks on her reputation and removal from office.¹²⁵ She has now been acquitted of all charges alleged against her, but only after years of hardship and expense.¹²⁶ Moreover, Ms. De Lima noted that the Marcos government's Solicitor General appealed one of her acquittals.¹²⁷ In an August 7, 2024 order, however, a court denied the motion for reconsideration, finding that an appeal on a decision to dismiss would violate the double-jeopardy clause of the Philippine Constitution.¹²⁸

The International Law Section's International Human Rights Committee continues its efforts to hold similar programming focused on other countries.¹²⁹ The developments over the past year have only solidified the commitment of many in the International Human Rights Committee to bring light to these issues and work towards first raising worldwide awareness to the tactics of such oppression and then fostering a unified effort by the UN and others to put an end to these attacks worldwide.

VI. Support for Afghan Women Judges

Conditions for women and girls in Afghanistan continue to deteriorate as the Taliban extends restrictions on women, introducing new practices such as prohibiting a woman's voice from being heard in public.¹³⁰ According to the Taliban, "[a] woman's voice is deemed intimate and so should not be heard singing, reciting, or reading aloud in public."¹³¹ Moreover, "[i]t is forbidden for women to look at men they are not related to by blood or marriage and vice versa."¹³²

The latest ban on women prevents girls from receiving education beyond the sixth grade,¹³³ along with other measures minimizing the place of women in Afghan society.¹³⁴ The UN reports that the measures taken in Afghanistan in the last three

for *Democratic Reform*, MONTHLY AU (Dec. 2024), <https://www.themonthly.com.au/december-2024-january-2025/essays/fight-philippines-leila-de-lima> [https://perma.cc/C9FK-WSZC].

125. See ABA INT'L, *supra* note 107; Simons, *supra* note 124.

126. See Magramo, *supra* note 123.

127. See ABA INT'L, *supra* note 107.

128. See Luisa Cabato, *Leila de Lima Acquittal Sealed as Muntinlupa Court Denies MR*, INQUIRER NET (Aug. 29, 2024, 6:09 PM), <https://newsinfo.inquirer.net/1977972/leila-de-lima-acquittal-sealed-as-muntinlupa-court-denies-mr> [https://perma.cc/DRL9-88QF].

129. See, e.g., ABA INT'L, *Challenges Facing Judges, Lawyers and Other Human Rights Defenders in Ecuador: Where are We Now?*, YOUTUBE (Jan. 24, 2025), <https://www.youtube.com/watch?v=my-blF5-m8IH8> [https://perma.cc/VM2T-GZKC]; ABA INT'L, *Poland and Rule of Law: Where are We Now?*, YOUTUBE (Jan. 22, 2025), <https://www.youtube.com/watch?v=dTIpg1dmzMA> [https://perma.cc/GLL7-WZBF].

130. See ASSOC. PRESS, *Taliban Bans the Sound of Women's Voices Singing or Reading in Public*, CNN (Aug. 22, 2024), <https://edition.cnn.com/2024/08/22/middleeast/taliban-law-women-voices-intl-latam/index.html> [https://perma.cc/5CA5-63S6].

131. *Id.*

132. *Id.*

133. See Rahim Faiez, *1,000 Days Have Passed Since the Taliban Barred Girls from Secondary Education, the UN Says*, AP NEWS (June 13, 2024), <https://apnews.com/article/taliban-banned-afghanistan-girls-school-e49d168375edc1ef5df97fec301af662> [https://perma.cc/FXY4-W3DD].

134. See ASSOC. PRESS, *supra* note 130.

years have led to the striking “erasure of Afghan women from public life” and have “eviscerat[ed] their autonomy.”¹³⁵

Alison Davidian, the UN Women Representative in Afghanistan, briefed journalists in New York on the UN Women Report addressing the plight of women and girls since the de facto authorities returned to power in August 2021.¹³⁶ Speaking via videoconference from the Afghan capital, Kabul, Davidian remarked:

Three years ago, the whole world was watching a takeover that was livestreaming horror after horror. Three years later, while the world’s attention may have turned elsewhere, the horrors have not stopped for Afghan women and girls, nor has their conviction to stand against the oppression.¹³⁷

For women judges and their families who were able to leave Afghanistan following the United States’ withdrawal in 2021, their path in the United States has not been easy.¹³⁸ But compared to those who were unable to leave Afghanistan, the opportunities, although challenging to tackle, have been significant.¹³⁹

A recently published report by the International Association of Women Judges was shared on a recent panel discussing the successes and challenges overcome by women judges who have made their way out of Afghanistan.¹⁴⁰ The report stated:

On September 19, 2024, a panel of distinguished women convened in a joint endeavor of Human Rights Watch and the International Association of Women Judges (IAWJ). They discussed the challenges Afghan women judges have faced prior to and since the Taliban’s takeover of the country on August 15, 2021. Macarena Sáez, the executive director of Human Rights Watch’s Women’s Rights division, moderated this LinkedIn Audio Event. She was joined by a group of four extraordinary women: Judge Marzia Babakarkhail, Justice Mona Lynch, Judge Basira Qazizada, and Judge Wahida Rahimi.

135. Alison Davidian, Press Briefing at the United Nations Headquarters by UN Women Country Representative in Afghanistan, Alison Davidian, on Three-year Mark of the Taliban Takeover, UN WOMEN (Aug. 13, 2024), <https://www.unwomen.org/en/news-stories/press-briefing/2024/08/press-briefing-at-the-united-nations-headquarters-by-un-women-country-representative-in-afghanistan-alison-davidian-on-the-three-year-mark-of-the-taliban-takeover> [https://perma.cc/NVB3-SSHY]; see also Dianne Penn, *Afghanistan: Taliban Rule has Erased Women from Public Life, Sparked Mental Health Crisis*, UN NEWS (Aug. 13, 2024), <https://news.un.org/en/story/2024/08/1153151> [https://perma.cc/V2DC-2LHG].

136. Davidian, *supra* note 135.

137. *Id.*

138. See Nat’l Ass’n of Women Judges, *Statement from the Afghan Women Judges’ Committee on the Third Anniversary of the Fall of Kabul*, NAWJ (Sept. 4, 2024), <https://www.nawj.org/blog/newsroom/news/statement-from-the-afghan-women-judges-committee-on-the-third-anniversary-of-the-fall-of-kabul> [https://perma.cc/ZB87-YWTP].

139. *Id.*

140. See generally Catherine Spurgeon, *The Resilience of Afghan Women Judges*, INT’L ASS’N OF WOMEN JUDGES (Oct. 7, 2024), https://www.iawj.org/content.aspx?page_id=2507&club_id=8822-24&item_id=5493 [https://perma.cc/KCR5-KA2V].

These women contributed their expertise and lived experiences--stories of resilience and tireless commitment to justice.¹⁴¹

The UN Women Afghanistan Gender Country Profile for 2024¹⁴² highlights the direct impact of removing all women from the judiciary on access to justice for women and girls in Afghanistan. According to this report:

Women's and girl's access to the justice system is being severely curtailed by limitations on their freedom of movement, reliance on male family members (who may be the perpetrators of violence), and the absence of women lawyers and judges able to work in the legal system, as well as the absence of capacity within the DFA [de facto authorities] system to prosecute and adjudicate GBV [Gender Based Violence] cases in line with international standards. Those women who have already managed to secure legal education have been removed from the justice system. Immediately following the Taliban takeover, women judges were dismissed en masse, and women lawyers face significant obstacles to practise, including non-renewal of law licences and prohibitions to take bar exams.¹⁴³

Australia, Canada, Germany, and the Netherlands are taking the Taliban to the International Court of Justice (ICJ) under the Convention on the Elimination of all Forms of Discrimination against Women, ratified by Afghanistan in 2003, regarding gender discrimination.¹⁴⁴ While there is a concern that the Taliban will ignore the ICJ's ruling, it could have a deterrent effect on signatories as they are expected to follow ICJ rulings.¹⁴⁵

Meanwhile, throughout the United States and other nations that took measures to bring Afghan women judges and their families out of Afghanistan, non-profits and legal organizations have been working to allow these women judges, as well as other legal professionals, to rebuild their careers in their new countries.¹⁴⁶

The ABA Afghan Legal Professionals Scholarship & Mentoring Pilot Program is one such initiative that helps judges and other legal professionals work toward

141. *Id.*

142. See generally Michelle GEHRIG & CAITLIN WILLISCROFT, GENDER COUNTRY PROFILE 2024: AFGHANISTAN (2024), <https://www.unwomen.org/sites/default/files/2024-06/Gender-country-profile-Afghanistan-en.pdf> [<https://perma.cc/XBB5-DQF5>].

143. *Id.* at 31.

144. See Betsy Reed, *Taliban to be Taken to International Court over Gender Discrimination*, THE GUARDIAN (Sept. 25, 2024, 11:47 AM), <https://www.theguardian.com/world/2024/sep/25/taliban-to-be-taken-to-international-court-over-gender-discrimination> [<https://perma.cc/3YM5-Q8MF>].

145. See *id.*

146. See, e.g., JAMS Foundation Grant Update in Support of Refuge Afghan Women Judges, NAWJ (June 29, 2023), <https://www.nawj.org/blog/newsroom/news/jams-foundation-grant-update-in-support-of-refugee-afghan-women-judges> [<https://perma.cc/56QX-VY4D>]; *Supporting Afghan Women Judges in Crisis: Inagural DLA Piper Pro Bono LeadHer Award Presented to IAWJ Afghan Support Committee*, DLA PIPER, <https://www.dlapiper.com/en/insights/publications/2023/04/pro-bono-bulletin/supporting-afghan-women-judges-in-crisis> [<https://perma.cc/W33U-P8VR>] (last visited Apr. 4, 2025).

reentering the legal profession through access to U.S. legal studies.¹⁴⁷ This Pilot Program facilitates funding and support to qualified participants pursuing LL.M. degrees in American law at one of twenty-four partnering ABA-approved law schools to prepare to take the bar exam in the United States.¹⁴⁸

Mike Byowitz, former ILS Section Chair and current Chair of the Task Force that created and is implementing the Pilot Program, stated:

We are grateful for the support of the U.S. legal community for the Pilot Program including that of the participating law schools, our volunteer Mentors, and our volunteer service providers (LexisNexis, Themis, USLawEssentials and Juriscribe), and our heartfelt thanks to the ILS Council and the ABA Board of Governors for approving the Pilot Program and to our contributors for providing the funding to make the Pilot Program possible.¹⁴⁹

VII. Developments in Women's Human Rights

A. AFGHANISTAN

Since the Taliban's return to power in 2021, Afghanistan has become one of the most oppressive countries for women where strict gender apartheid is practiced.¹⁵⁰ The Taliban's ultra-orthodox religious regime banned women from higher education and universities and prevented female students from pursuing professions.¹⁵¹ Even middle school education of girls after sixth grade is prohibited.¹⁵² The Taliban introduced sweeping bans on women's participation in NGOs, effectively excluding them from humanitarian work, a sector in which they were pivotal.¹⁵³ In August 2024, the situation of women and girls worsened with a new ban prohibiting women from speaking, laughing, reading, or singing in public via the adoption of a law known as the "Law on the Promotion of Virtue and the Prevention of Vice."¹⁵⁴

147. See generally *ABA Afghan Legal Professionals Scholarship & Mentoring Pilot Program*, ABA, https://www.americanbar.org/groups/international_law/about/projects/afghan-legal-professionals [<https://perma.cc/M5ZU-33K8>] (last visited Apr. 7, 2025).

148. *Id.* As of 2024, the Pilot Program has assisted two students obtain an LL.M., seven others are currently enrolled in LL.M. degree programs, and one more has been accepted this year to begin an LL.M. program in August 2025. See *Afghan Legal Professionals Scholarship & Mentoring Pilot Program Newsletter: Two Years Strong: Pilot Program Transforms Lives*, ABA, Oct. 2024, at 1.

149. Interview with Michael Byowitz, Chair of the Afghan Legal Prof'l Scholarship and Mentoring Pilot Program (Nov. 2024).

150. John Sifton, *UN Report Details Taliban Abuses in Afghanistan*, HUM. RTS. WATCH (Sept. 7, 2022, 3:00 AM), <https://www.hrw.org/news/2022/09/07/un-report-details-taliban-abuses-afghanistan> [<https://perma.cc/M5HD-ZV76>].

151. See *Afghanistan: Taliban Ban Women from Universities Amid Condemnation*, BBC (Dec. 21, 2022), <https://www.bbc.com/news/world-asia-64045497> [<https://perma.cc/VW6Y-CMWK>].

152. *Id.*; see also Faiez, *supra* note 133.

153. Aalia Farzan et al., *Afghanistan: Taliban Ban Women from Working for NGOs*, BBC (Dec. 24, 2022), <https://www.bbc.com/news/world-asia-64086682> [<https://perma.cc/A666-2HY3>].

154. ASSOC. PRESS, *Taliban Bans the Sound of Women's Voices Singing or Reading in Public*, CNN WORLD (Aug. 22, 2024), <https://www.cnn.com/2024/08/22/middleeast/taliban-law-women-voices-intl-latam/index.html> [<https://perma.cc/KU92-984V>].

Under this law, women are even forbidden from reading the Quran to other women.¹⁵⁵ The Taliban is actively enforcing the strictest dress codes ensuring the complete erasure of women from public spaces, making it mandatory for them to veil their entire bodies, including their faces.¹⁵⁶ Women are forbidden from attending parks, gyms, sports, cultural events, and markets.¹⁵⁷ All women-owned beauty salons—the principal place where Afghan women could meet outside the home—are closed.¹⁵⁸ These restrictions harm all women and girls, but even more so widows and women-led households, forcing many into poverty and extreme vulnerability.¹⁵⁹ While some Afghan women activists have risked their lives to protest, their brave resistance has been met with imprisonment or other forms of violence, underscoring the Taliban's total grip on society.¹⁶⁰ While difficult to verify, various reports suggest that the suicide rate among Afghan girls is now exceptionally high.¹⁶¹

B. IRAN

In Iran, women's rights have been a central issue for decades, but in recent years the renewed repression has been met with unprecedented resistance.¹⁶² In 2022, the death of Mahsa Amini after being detained by the morality police for allegedly wearing her hijab "improperly" ignited widespread protests under the slogan: "Woman, Life, Freedom."¹⁶³ Despite severe crackdowns, including arrests,

155. ASSOC. PRESS, *Afghan Women Can't Pray Loudly or Recite in Front of Other Women, Taliban Minister Says*, NBC NEWS (Oct. 30, 2024), <https://www.nbcnews.com/news/world/afghan-women-cannot-pray-loudly-recite-front-women-says-taliban-minist-rcna177990> [https://perma.cc/5LJ5-NUAG].

156. Kathryn Mannie, *Taliban Bans Women's Voices, Bare Faces from Public in New Restrictive Laws*, GLOB. NEWS (Aug. 23, 2024, 11:06 PM), <https://globalnews.ca/news/10712505/taliban-bans-womens-voices-faces-laws> [https://perma.cc/KJ5X-B2MZ].

157. ASSOC. PRESS, *Taliban Ban Women from Parks and Gyms in Afghanistan*, NBC NEWS (Nov. 10, 2022, 5:34 AM), <https://www.nbcnews.com/news/world/taliban-ban-women-parks-gyms-afghanistan-rcna56539> [https://perma.cc/WR34-SR5B].

158. *Taliban Orders Closure of Afghan Beauty Salons in Latest Restriction against Women*, GLOB. NEWS (July 6, 2023), <https://globalnews.ca/video/9816554/taliban-orders-closure-of-afghan-beauty-salons-in-latest-restriction-against-women> [https://perma.cc/Y8M8-9T6T].

159. See *id.*

160. Radio Azadi, *Afghan Women Activists Seek Taliban ICC Trial Over Rights Abuses*, RADIO FREE EUR. RADIO LIBERTY (Nov. 28, 2023), <https://www.rferl.org/a/32703554.html> [https://perma.cc/B9KD-MEGG].

161. See, e.g., Sana Safi, *Why Female Suicide in Afghanistan Is So Prevalent*, BBC (June 30, 2018), <https://www.bbc.com/news/world-asia-44370711> [https://perma.cc/H5TM-FUQK]; Mark A. Green, *Women and Suicide in Afghanistan*, WILSON CTR: BLOG (Sept. 19, 2023), <https://www.wilsoncenter.org/blog-post/women-and-suicide-afghanistan> [https://perma.cc/3ZPU-CA96].

162. Donya Ziaee, *The Stolen Revolution: Iranian Women of 1979*, CBC RADIO (Mar. 8, 2019, 12:29 PM), <https://www.cbc.ca/radio/ideas/the-stolen-revolution-iranian-women-of-1979-1.504-8382> [https://perma.cc/S498-7GTL].

163. See David S. Cloud, *Who Is Mahsa Amini and Why Did Her Death Spark Protests in Iran?*, WALL ST. J. (Sept. 23, 2022), <https://www.wsj.com/story/who-is-mahsa-amini-and-why-did-her-death-spark-protests-in-iran-d4236eb3> [https://perma.cc/E5FQ-J8EY]; Kimberly Bond, *This Woman's Revolution in the Making: How the Death of Mahsa Amini in Iran Sparked Worldwide Protest*, METRO NEWS (Sept. 27, 2022, 2:42 PM), <https://metro.co.uk/2022/09/27/mahsa-amini-how-her-death-in-custody-in-iran-sparked-global-protests-17455989/> [https://perma.cc/YV8Z-DDS8].

executions, and internet blackouts, Iranian women have continued to challenge the regime's authority.¹⁶⁴

In 2024, the government remains steadfast in enforcing its dress code laws, penalizing women who refuse to wear the hijab with hefty fines, job losses, and imprisonment.¹⁶⁵ The government has intensified its surveillance and policing efforts to enforce hijab compliance using face recognition and other AI technologies.¹⁶⁶ This includes stopping women drivers on the road, confiscating vehicles, and imposing harsh penalties such as flogging and imprisonment.¹⁶⁷

Nevertheless, the movement for change persists, with women organizing underground networks to defy these rules, but the penalties are harsh.¹⁶⁸ Recently, a university student from the Islamic Azad University in Tehran stripped to her underwear to protest against the demands that women wear the hijab.¹⁶⁹ She was promptly branded mentally ill, and security forces abducted her from campus and took her to a psychiatric facility.¹⁷⁰ Even more tragically, in July 2024, woman human rights defender Sharifeh Mohammadi and her lawyer were handed a death sentence on the charge of rebelling against the “just” Islamic rulers.¹⁷¹

164. *Iran: Testimonies Provide a Frightening Glimpse into the Daily Reality of Women and Girls*, AMNESTY INT'L (Mar. 6, 2024), <https://www.amnesty.org/en/documents/mde13/7770/2024/en/> [<https://perma.cc/38H5-QL9H>].

165. See *Iran: UN Experts Call for Strict New Hijab Law to Be Repealed*, UN (Dec. 13, 2024), <https://news.un.org/en/story/2024/12/1158171> [<https://perma.cc/8LKK-5RSG>]; see also Melanie Swan, *Iran Sets up Mental Health Clinic to 'Treat' Women who Refuse to Wear Hijab*, YAHOO! NEWS (Nov. 13, 2024), <https://www.yahoo.com/news/iran-sets-mental-health-clinic-155111392.html> [<https://perma.cc/JT2C-G9UW>] (explaining that women who resist hijab in Iran are to be sent to mental health institutions); *Iran: New Compulsory Veiling Law Intensifies Oppression of Women and Girls*, AMNESTY INT'L (Dec. 5, 2024), <https://www.amnesty.org/en/latest/news/2024/12/iran-new-compulsory-veiling-law-intensifies-oppression-of-women-and-girls> [<https://perma.cc/4D2C-NCMS>].

166. Alex Winston, *Big Brother in Tehran: Iran's Police State Suppresses Women with AI, Drones*, JERUSALEM POST (Mar. 16, 2025), <https://www.jpost.com/middle-east/iran-news/article-846253> [<https://perma.cc/9DHT-KLD8>].

167. *Iran: Draconian Campaign to Enforce Compulsory Veiling Laws through Surveillance and Mass Car Confiscations*, AMNESTY INT'L (Mar. 6, 2024), <https://www.amnesty.org/en/latest/news/2024/03/iran-draconian-campaign-to-enforce-compulsory-veiling-laws-through-surveillance-and-mass-car-confiscations> [<https://perma.cc/RM2V-DACS>].

168. See, e.g., Sahar Zand, *Iran: The fight for “Women, Life, Freedom” Isn't Over*, SKY NEWS, <https://news.sky.com/story/iran-the-fight-for-women-life-freedom-carries-on-underground-12845462> [<https://perma.cc/3DHS-VTDP>] (last visited Apr. 5, 2025).

169. Akhtar Makoi, *Iran Student Strips in Protest over Strict Hijab Dress Code*, TELEGRAPH (Nov. 3, 2024), <https://www.telegraph.co.uk/world-news/2024/11/03/iran-student-strips-in-protest-over-strict-hijab-dress-code> [<https://perma.cc/RP3E-TUMH>].

170. *Id.*

171. *Death Sentence against Woman Human Rights Defender Sharifeh Mohammadi*, FRONT LINE DEF., <https://www.frontlinedefenders.org/en/case/death-sentence-arbitrarily-reissued-against-sharifeh-mohammadi> [<https://perma.cc/2C33-DEH8>] (last visited Apr. 5, 2025).

C. THE UNITED STATES

The 2022 Supreme Court ruling in *Dobbs v. Jackson Women's Health Organization*¹⁷² overturning *Roe v. Wade*¹⁷³ reshaped the landscape of reproductive rights in the United States, with repercussions unfolding in 2024. Over a dozen states have enacted near-total abortion bans, leaving millions of women without access to safe reproductive healthcare.¹⁷⁴ States like Texas, Alabama, and Louisiana have passed particularly restrictive laws, criminalizing abortion providers and imposing heavy penalties for those seeking the procedure.¹⁷⁵ Idaho, Oklahoma, and Texas also enacted "vigilante laws" which allow anyone from the public to sue whomever they suspect of facilitating abortion in any shape or form.¹⁷⁶

This new reality disproportionately affects very young as well as older women, those from marginalized communities, and low-income women, especially in rural areas, as these individuals face significant barriers, both financial and logistical, to travel to states where abortion remains legal.¹⁷⁷ Some states, like Louisiana, have been attempting to criminalize mailing or distributing abortion pills from other states where these drugs are legal.¹⁷⁸ Others are attempting to criminalize the travel of pregnant women to the states where abortion is legal.¹⁷⁹ Alabama's attorney general has recently declared the power to prosecute people who help residents leave the state for an abortion using criminal conspiracy laws.¹⁸⁰

Notably, the United States remains the only country among developed nations that does not offer constitutional protection of equal rights for women, and the

172. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

173. *Roe v. Wade*, 410 U.S. 113 (1973), overruled by *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

174. *State Bans on Abortion Throughout Pregnancy*, GUTTMACHER (Mar. 26, 2025), <https://www.guttmacher.org/state-policy/explore/state-policies-abortion-bans> [<https://perma.cc/WR5G-XLTA>]; *Texas Supreme Court Rules Against Women Denied Abortion Care Despite Dangerous Pregnancy Complications*, CTR. FOR REPROD. RTS. (May 31, 2024), <https://reproductiverights.org/zurawski-v-texas-ruling-texas-supreme-court> [<https://perma.cc/YBG8-6G69>].

175. GUTTMACHER, *supra* note 174.

176. Women and Foreign Policy Program Staff, *Abortion Law: Global Comparisons*, COUNCIL ON FOREIGN REL. (Mar. 7, 2024, 2:30 PM), <https://www.cfr.org/article/abortion-law-global-comparisons> [<https://perma.cc/QE9H-S9RX>].

177. Shanoor Seervai et al., *Limiting Abortion Access for American Women Impacts Health, Economic Security: An International Comparison*, COMMONWEALTH FUND (Jan. 12, 2023), <https://www.commonwealthfund.org/blog/2023/limiting-abortion-access-american-women-impacts-health-economic-security> [<https://perma.cc/5LZR-ZP69>]; Andrea J Hoopes et al., *Elevating the Needs of Minor Adolescents in a Landscape of Reduced Abortion Access in the United States*, PMC (Sept. 10, 2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10511203> [<https://perma.cc/5NGR-H6AX>].

178. Lorena O'neil, *Louisiana Lawmakers Move to Criminalize Possession of Abortion Pills*, ROLLING STONE (May 1, 2024), <https://www.rollingstone.com/politics/politics-features/louisiana-criminalize-possession-abortion-pills-1235013039> [<https://perma.cc/5QGV-CXB2>].

179. Sahil Kapur et al., *Republicans Block Bill to Protect Women Who Travel to Other States for Abortions*, NBC NEWS (July 14, 2022), <https://www.nbcnews.com/politics/congress/republicans-block-bill-protecting-women-travel-states-abortion-rcna38301> [<https://perma.cc/2CKLE3M7>].

180. Mary Anne Pazanowski, *Doubts Over Abortion Travel Bans Lead States to Try Other Means*, BLOOMBERG L. (May. 15, 2024, 3:45 AM), <https://news.bloomberglaw.com/health-law-and-business/doubts-over-abortion-travel-bans-lead-states-to-try-other-means> [<https://perma.cc/QQ99-3JEJ>].

status of the Equal Rights Amendment remains to be determined.¹⁸¹ As Justice Antonin Scalia famously stated in an interview with California Lawyer in 2011, the U.S. Constitution does not mandate discrimination against women, but it does not prohibit such gender discrimination either.¹⁸²

D. POLAND

Poland has long been a battleground for reproductive rights.¹⁸³ The 2020 ruling by the Constitutional Tribunal effectively banned abortion in nearly all cases, including those involving severe fetal abnormalities, which had previously accounted for the majority of legal abortions in the country.¹⁸⁴ In 2023, the pro-Catholic conservative government led by the right-wing Law-and-Justice party was removed from power, mainly due to women's votes, as they promised to repeal the inhumane abortion law.¹⁸⁵ Yet, by the end of 2024, this near-total ban remains firmly in place, and the new ruling coalition has been unable to fulfill its promises.¹⁸⁶ This situation is forcing women to seek abortions abroad or turn to unsafe, clandestine procedures.¹⁸⁷ Several women have died because of the law.¹⁸⁸ One case that drew international outrage involved a woman named Izabela, a mother of two, who died of sepsis in 2021 after doctors delayed a life-saving abortion for fear of legal consequences.¹⁸⁹ Her death became a rallying cry for Polish women who staged mass

181. See Ian Millhiser, *Scalia Says Constitution Does Not Prevent Gender Discrimination*, THINK PROGRESS (Sept. 20, 2010), <https://archive.thinkprogress.org/scalia-says-constitution-does-not-prevent-gender-discrimination-3ac790406371> [<https://perma.cc/LPV6-DARM>].

182. *Id.* Legal scholars and advocates have widely criticized Scalia's view for women's rights who argued that the 14th Amendment's broad language was intended to provide equal protection to all persons, including women. See Lenora M. Lapidus, *The Constitution Protects Women Despite Justice Scalia's Views*, ACLU (Jan. 6, 2011), <https://wp.api.aclu.org/news/smart-justice/constitution-protects-women-despite-justice-scalias-views> [<https://perma.cc/7SAH-YTFP>].

183. See, e.g., Monika Pronczuk, *Poland Court Ruling Effectively Bans Legal Abortions*, N.Y. TIMES (Oct. 22, 2022), <https://www.nytimes.com/2020/10/22/world/europe/poland-tribunal-abortion.html> [<https://perma.cc/BS8Z-FZXV>].

184. *Id.* The Polish abortion ban was instigated by a right-wing organization, Ordo Iuris, supported by the Roman Catholic Church. KLEMENTYNA SUCHANOW, *TO JEST WOJNA. KOBIETY, FUNDAMENTALIŚCI I NOWE ŚREDNIOWIECZE* [THIS IS WAR. WOMEN, FUNDAMENTALISTS, AND THE NEW MIDDLE AGES] (2020) (Pol.).

185. See, e.g., Anna Noryskiewicz, *Poland's Parliament Backs Easing of Abortion Laws, Among the Strictest in Europe*, CBS NEWS (Apr. 12, 2024), <https://www.cbsnews.com/news/poland-abortion-law-amendments-parliament-vote-europe> [<https://perma.cc/JD2N-6PHE>].

186. See Anna Błuś, *A Year after Tusk Came to Power, Why Is Access to Safe and Legal Abortion Still a Distant Dream in Poland?*, AMNESTY INT'L (Oct. 15, 2024), <https://www.amnesty.org/en/latest/news/2024/10/a-year-after-tusk-came-to-power-why-is-access-to-safe-and-legal-abortion-still-a-distant-dream-in-poland> [<https://perma.cc/X7WT-R7Q5>].

187. CENTER FOR REPRODUCTIVE RIGHTS & FEDERA, COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN: INQUIRY INTO POLAND'S ABORTION LAW 5 (2024).

188. *Id.* at 3.

189. See Sammy Westfall, *Poland's Abortion Law under Scrutiny after Pregnant Woman Dies in Hospital*, WASH. POST (Nov. 3, 2021), <https://www.washingtonpost.com/world/2021/11/03/abortion-law-poland-debate> [<https://perma.cc/KJ59-YHK9>].

protests, yet little has changed at the legislative level.¹⁹⁰ Women's rights groups in Poland continue to fight in collaboration with international organizations, but the road to change remains fraught with challenges.¹⁹¹

E. LATIN AMERICA

Argentina, which pioneered women's rights via their Marea Verde movement¹⁹² and expanded women's reproductive rights to the whole region, is now part of the global regression in women's human rights.¹⁹³ The newly elected right-wing President Javier Milei of Argentina closed the Ministry of Women, Gender, and Diversity and dissolved the Secretariat of Protection Against Gender Violence.¹⁹⁴ In just the first quarter of 2024, Mieli also reduced public spending (according to the Civil Association for Equality and Justice (ACIJ)), on programs to help victims of gender-based violence by seventy-eight percent, and many other programs affecting women were cut or eliminated.¹⁹⁵

El Salvador, a country notorious for the "torture of women" via draconian laws that imprison women (even for natural miscarriages) with sentences up to fifty years,¹⁹⁶ has a newly re-elected President, Nayib Bukele.¹⁹⁷ Conservative and patriarchal, he recently changed public education curricula in February 2024 and excluded materials related to women's human rights.¹⁹⁸ José Mauricio Pineda, his Minister of Education, commented, "[w]e have removed all traces of gender

190. See Courtney Blackington, *Two Polish Women Died after Being Refused Timely Abortions. Many Poles are Outraged – and Protesting*, WASH. POST (Feb. 18, 2022), <https://www.washingtonpost.com/politics/2022/02/18/poland-abortion-protest> [https://perma.cc/MEB3-F9PX].

191. See Ewa Majewska et al., *From the Women's Strike to the Feminist International: In Struggle We Unite – Voices from Poland*, VIEWPOINT MAG. (June 18, 2019), <https://viewpointmag.com/2019/06/18/from-the-womens-strike-to-the-feminist-international-in-struggle-we-unite-voices-from-poland> [https://perma.cc/L689-6289].

192. See, e.g., Raevyn Reader, *La Marea Verde: The Green Wave Movement Paving the Way for Reproductive Justice in Latin America*, DENV. J. OF INT'L LAW AND POL'Y (Nov. 17, 2024), <https://djilp.org/la-marea-verde-the-green-wave-movement-paving-the-way-for-reproductive-justice-in-latin-america> [https://perma.cc/6G5L-G28V].

193. See Martina Jauregui, *Government Shuttters What Remained of Women, Gender, Diversity Ministry*, BUENOS AIRES HERALD (June 6, 2024), <https://buenosairesherald.com/politics/government-shuttters-what-remained-of-women-genders-diversity-ministry> [https://perma.cc/48YT-BQSU].

194. *Id.*

195. Martina Jauregui, *Gender Policy in the Milei Era: Five Months of Dismantlement and Misogynistic Attacks*, BUENOS AIRES HERALD (June 3, 2024), <https://buenosairesherald.com/society/social-movements/gender-policy-in-the-milei-era-five-months-of-dismantlement-and-misogynistic-attacks> [https://perma.cc/J4EM-Q3FU].

196. Maria Luz Nóchez, *In El Salvador, a Victory for Women who Were Jailed under the Country's Draconian Anti-abortion Laws*, EL PAÍS (Jan. 30, 2024), <https://english.elpais.com/international/2024-01-30/in-el-salvador-a-victory-for-women-who-were-jailed-under-the-countrys-draconian-anti-abortion-laws.html> [https://perma.cc/594B-S28X].

197. Carlos Maldonado, *Bukele Attacks Gender Theory and Removes It from Public Schools in El Salvador*, EL PAÍS (Mar. 1, 2024), <https://english.elpais.com/international/2024-03-01/bukele-attacks-gender-theory-and-removes-it-from-public-schools-in-el-salvador.html> [https://perma.cc/D4GF-L6MA].

198. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

352 THE YEAR IN REVIEW

[VOL. 59]

ideology from public schools.”¹⁹⁹ Bukele also rejects any relaxation of abortion laws as well as opposes same-sex marriage.²⁰⁰ Celia Medrano, a human rights lawyer, describes Bukele as “a highly conservative man with a very clear tendency to manipulate religion [in favor of] the message that women have to be kept at home.”²⁰¹ While women’s organizations are trying to combat this narrative, the situation is grave.²⁰² The Inter-American Court of Human Rights investigated the case of a twenty-one-year-old woman (*Beatriz v El Salvador*), a mother of a nine-month-old child, who suffered from kidney disease and lupus and became pregnant with a fetus that had no skull and no brain and could not survive, and ruled in her favor in December 2024.²⁰³ The Court ordered El Salvador to provide comprehensive health care to Beatriz’s family, train health personnel and state officials, as well as adopt regulatory measures to provide legal security in cases of high-risk pregnancies.²⁰⁴ Hopefully, this ruling will serve as a wake-up call for other states in Latin America that maintain an absolute prohibition on abortion.²⁰⁵ Under national law, abortion is not permitted under any circumstances, therefore she could not terminate the pregnancy and eventually died.²⁰⁶

Similar trends can be observed in Uruguay, the third Latin American country that decriminalized abortion through the Voluntary Interruption of Pregnancy Law.²⁰⁷ The country is now facing several bills aimed at repealing this law and other pro-women laws dealing with gender violence.²⁰⁸

199. *Id.*

200. *Id.*

201. *See id.*

202. Noor Mahtani, *Beatriz vs El Salvador: The Landmark Case that Could Change the Most Restrictive Abortion Laws in the Americas*, EL PAÍS (Mar. 23, 2023), <https://english.elpais.com/international/2023-03-23/beatriz-vs-el-salvador-the-landmark-case-that-could-change-the-most-restrictive-abortion-laws-in-the-americas.html> [<https://perma.cc/W78E-3TVR>].

203. Christina Quijano Carrasco, *Inter-American Court Finds El Salvador Responsible for Obstetric Violence in Landmark Ruling*, HUM. RTS. WATCH (Dec. 23, 2024), <https://www.hrw.org/news/2024/12/23/inter-american-court-finds-el-salvador-responsible-obstetric-violence-landmark> [<https://perma.cc/3EEC-PTVZ>].

204. *El Salvador: IACtHR Advances Reproductive Justice with Ruling in Favor of Beatriz and her Family*, AMNESTY INT’L (Dec. 23, 2024), <https://www.amnesty.org/en/latest/news/2024/12/el-salvador-corte-idh-avanza-justicia-reproductiva-con-fallo-favor-beatriz-familia/> [<https://perma.cc/L389-LF83>].

205. *Id.*

206. Susan Wood et al., *Reform of Abortion Law in Uruguay: Context, Process and Lessons Learned*, REPROD. HEALTH MATTERS (2016); *Uruguay Becomes the Third Nation in Latin America to Decriminalize Abortion*, CTR. FOR REPROD. RTS. (Oct. 19, 2012), <https://reproductiverights.org/uruguay-becomes-the-third-nation-in-latin-america-to-decriminalize-abortion> [<https://perma.cc/AFY4-5W-TU>].

207. *See, e.g.*, Wood, *supra* note 206.

208. *See* Ezequiel Fernandez, *Challenges, Lights and Shadows of Xiomara Castro’s Government in Honduras*, GLOB. CAMPUS OF HUM. RTS. BLOG (Jan. 25, 2024), <https://www.gchuman-rights.org/preparedness/challenges-lights-and-shadows-of-xiomara-castro-s-government-in-honduras> [<https://perma.cc/Q5T7-Z73X>]; *Thousands of Girls and Women are Fleeing Rape, Sexual Violence and Torture in Honduras, El Salvador and Guatemala*, CTR. FOR GENDER & REFUGEE STUD. (July 2014), https://cgrs.uclawsf.edu/talking_points_and_stories [<https://perma.cc/6JEG-PDPG>].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

HUMAN RIGHTS 353

Even Honduras, led by its first woman president, Xiomara Castro, has faced significant challenges in implementing her campaign promises.²⁰⁹ President Castro recently vetoed a law permitting sex education in schools, bowing to the pressure of conservative religious leaders.²¹⁰ In addition, her efforts to ease one of the most inhumane anti-abortion laws in the world are facing massive opposition from religious groups.²¹¹ Honduras is one of six countries in Latin America that bans abortion under all circumstances, including rape, despite having one of the highest rates of sexual violence in the region.²¹² Moreover, until 2023 Honduras banned emergency contraception.²¹³ These inhumane laws lead to high numbers of unsafe abortions, maternal morbidity, and unjust criminal prosecutions.²¹⁴ According to the UN Special Rapporteur on Violence Against Women, the number of violent deaths of women in Honduras increased by 263.4% by 2013, with a 95% impunity rate for sexual violence and femicide.²¹⁵

209. Edgardo Ayala, “No” to Sex Education Fuels Early Pregnancies in Central America, GLOB. ISSUES (Aug. 3, 2023), <https://www.globalissues.org/news/2023/08/03/34418> [<https://perma.cc/3SRB-WRKF>].

210. *Id.*

211. *Id.*

212. Amy Braunschweiler & Margaret Wurth, *Life or Death Choices for Women Living Under Honduras’ Abortion Ban*, HUM. RTS. WATCH (June 6, 2019, 6:00 AM), <https://www.hrw.org/news/2019/06/06/life-or-death-choices-women-living-under-honduras-abortion-ban> [<https://perma.cc/V43B-H8EL>].

213. Cristina Quijano Carrasco, *Honduras Ends Ban on Emergency Contraception*, HUM. RTS. WATCH (Mar. 15, 2023, 1:51 PM), <https://www.hrw.org/news/2023/03/13/honduras-ends-ban-emergency-contraception> [<https://perma.cc/37AW-62BG>].

214. See, e.g., Braunschweiler, *supra* note 212.

215. Special Rapporteur (Rashida Manjoo), Statement on Violence Against Women in Honduras (July 7, 2014), <https://www.ohchr.org/en/statements-and-speeches/2014/07/special-rapporteur-violence-against-women-finalizes-country-mission> [<https://perma.cc/XE7Z-T65X>]; CTR. FOR GENDER & REFUGEE STUD., *supra* note 208.

THE YEAR IN REVIEW
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Lawyers Abroad

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This Article discusses significant legal developments in law related to Lawyers Abroad during 2024.

I. MiCAR Updates

The European Union (EU) adopted MiCAR, the Markets in Crypto-Assets Regulation, in May 2023.¹ The end of June 2024 witnessed the implementation of Titles III and IV² concerning certain stablecoins, with December 30, 2024 predicted for its full enforcement.³ MiCAR seeks to regulate and simplify the language and operational parameters surrounding crypto and its operators to provide secure and competitive crypto-assets and services in the EU member states.⁴

A. MiCAR'S SCOPE

"Crypto-asset service provider" (CASP) serves as a catch-all for service providers of assets regulated under MiCAR, for example non-custodial wallet holders, advisors, and exchanges.⁵ MiCAR's language suggests that CASP obligations will depend on the place in which the services are provided rather than the jurisdictional establishment.⁶ CASP authorization requires a firm to (i) register in the EU, (ii) have its place of effective management in the EU, and (iii) employ at least one EU resident as a director.⁷ A CASP operating lawfully under state laws prior to

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1. Regul. 2023/1114 of May 31, 2023, Mkt. in Crypto-Assets, and Amending Regul. (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937, 2023 O.J. (L 150) 40 (hereinafter EU MiCA Reg. 2023/1114).

2. *Id.* at 183.

3. *Id.*

4. *Id.* at 41.

5. *Id.* at 45.

6. *Id.*

7. EU MiCA Reg. 2023/1114, *supra* note 1, at 53.

December 30, 2024 may continue operations under a grandfathering clause until the earlier of receiving a MiCAR decision or July 1, 2026.⁸

MiCAR's scope heavily relies upon the existing MiFID II (Markets in Financial Instruments Directive, 2014), which standardized investment services regulations across the European Economic Area.⁹ MiCAR defines (i) asset-referenced tokens (Title III): also known as stablecoins, which are backed by one or more legal tender, commodity, or cryptocurrency to achieve value stability; (ii) e-money tokens (Title IV): stablecoins backed by one official currency; and (iii) utility tokens: digital crypto-assets providing access to a good or service supplied by the issuer. For example, an issued token granting access to an exclusive concert.¹⁰ Traditional assets that may be digitized, such as a stock certificate issued as a blockchain token, would fall under the existing MiFID regime.¹¹ The obligations imposed under MiCAR exempt central bank digital currencies (CBDCs),¹² decentralized finance (DeFi) protocols,¹³ and unique non-fungible tokens (NFTs)¹⁴ amongst other specific digital assets with limited functionality and creation.¹⁵ Importantly, stablecoins have stricter requirements than other digital assets.¹⁶

B. PENDING AMENDMENTS

Over the course of 2024, the EU markets watchdog, the European Securities and Markets Authority (ESMA) released periodic statements on MiCAR calling for the European Commission to amend regulatory technical standards to increase crypto asset market resilience and enhance investor protections.¹⁷ In early October, ESMA advised that CASP applicants and notifying entities should provide external cybersecurity audit results, and CASP managers should be subject to broader background checks beyond financial fraud and crime, AML/CTF histories, and aspects concerning professional liability.¹⁸ As the European Council has three months to implement or reject the suggestions, the amendment's fruition will be reached by the December date mentioned above.¹⁹

8. *Id.* at 180.

9. Directive 2014/65/EU of May 15, 2014, Mkt. in Fin. Instruments and Amending Directive 2009/92/EC and Directive 2011/61/EU, 2014 O.J. (L 173) 349.

10. EU MiCA Reg. 2023/1114, *supra* note 1, at 44.

11. *Id.* at 53.

12. *Id.* at 43.

13. *Id.* at 45.

14. *Id.* at 42.

15. *Id.* at 44.

16. EU MiCA Reg. 2023/1114, *supra* note 1, at 47.

17. See ESMA, OPINION ON MICA REGUL. TECHNICAL STANDARDS ON THE AUTHORIZATIONS OF CRYPTO-ASSET SERVICE PROVIDERS AND NOTIFICATIONS BY CERTAIN FIN. ENTITIES TO PROVIDE CRYPTO-ASSET SERVICES 6 (2024).

18. *Id.* at 4.

19. *Id.* at 5.

C. PATCHWORK IMPLEMENTATION

While MiCAR introduces a universal licensing approach to harmonize the EU's twenty-seven-member state crypto operations, differences in member state implementation and concurrent regulations pose challenges to some CASP applicants.²⁰

MiCAR's CASP grandfathering clause permits an eighteen-month compliance window, but member states may choose to shorten this timeframe, for example, to twelve months as ESMA suggests,²¹ or omit it altogether.²² MiCAR also permits simplified application procedures for crypto institutions licensed under individual state law.²³

Countries like France, with existing digital asset service provider (DASP)²⁴ regulations similar to MiCAR, have transitioned smoothly.²⁵ While France allowed the full eighteen-month compliance window,²⁶ the Netherlands abridged the period to July 1, 2025.²⁷ In application, French-based entities may need a CASP license to operate in the Netherlands by the Dutch deadline.²⁸ Different deadlines pose challenges for entities operating in states with complex procedures and crypto-resistant policies.²⁹ Similarly, while Germany offers simplified procedures,³⁰ other countries, like Italy, do not.³¹ Ultimately, entities must strategize to secure their interests both domestically and internationally.³²

DORA, the Digital Operational Resilience Act, effective on January 17, 2025 and proposed alongside MiCAR, requires a higher cybersecurity standard than MiCAR,³³ overlapping the relevant authority sources for compliance.³⁴ Similarly, the Transfer of Funds Regulation (TFR), comes into force at the end of 2024 and requires DASPs to collect, share, and retain your Customer (KYC) records of all

20. See Verena Ross, ESMA Letter to Nadia Calvino on Effective Application of the MiCA Regul. (Oct. 17, 2023), ESMA 75-840896669-45, at 2.

21. *Id.*

22. EU MiCA Reg. 2023/1114, *supra* note 1, at 181.

23. *Id.*

24. See Alexandra Walters, *France Gets Ahead of the Game on MiCa*, XREG CONSULTING (Mar. 24, 2023), <https://www.xreg.consulting/articles/france-gets-ahead-of-the-game-on-mica> [<https://perma.cc/BFE3-F8WW>].

25. See *id.*

26. See *id.*

27. See *MiCa Implementation Act*, WATSON LAW (Sep. 5, 2023), <https://watsonlaw.nl/en/mica-implementation-act/> [<https://perma.cc/QJR5-FG6D>].

28. See *id.*

29. See *MiCa Implementation in Germany*, MANIMAMA LEGAL & GROWTH AGENCY (Aug. 1, 2024), <https://manimama.eu/mica-implementation-in-germany/> [<https://perma.cc/9UHX-AX3F>].

30. See *id.*

31. See Francesco Dagnino, Angelo Messore & Federico Bonardi, *New Crypto Rules in Italy: An Overview of the MiCAR Decree*, LEXIA (Mar. 7, 2024), <https://www.lexia.it/en/2024/07/03/new-crypto-micar-decree/> [<https://perma.cc/9GY9-GX6S>].

32. See *id.*

33. See *DORA Implementation for MiCAR Application Proves a Daunting Challenge for CASPs*, KPMG (Aug. 2, 2024), <https://kpmg.com/nl/en/home/insights/2024/07/dora-implementation-for-micar-application-proves-a-daunting-challenge-for-casps.html> [<https://perma.cc/D5NJ-P5RF>].

34. See *id.*

transfers EU and non-EU, resulting in additional compliance requirements.³⁵ Smaller firms, international firms, and firms issuing higher-risk assets seeking CASP licensing are likely to face greater pressure and challenges in meeting deadlines with the mix of legislation and implementation across the EU.³⁶

II. What is BEPS 2.0?

In October 2021, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (commonly referred to as BEPS 2.0 Project) agreed to fundamental terms to govern a two-pillar “Inclusive Framework” intended for the comprehensive reform of international tax regulations.³⁷ The effective date for many countries’ Pillar Two rules is January 1, 2024.³⁸

Pillar One focuses on the establishment of new nexus and profit allocation rules, aiming to allocate a more substantial portion of taxing authority regarding global business income to countries where market activities occur.³⁹ Pillar Two outlines the “Global Anti-Base Erosion” or “GloBE” Rules, serving as model rules for countries to implement, which note a new global minimum tax (GMT) set at fifteen percent,⁴⁰ applicable to multinational enterprise (MNE) groups with a global turnover amounting to at least €750 million in two of the previous four fiscal years.⁴¹

BEPS is a tax planning strategy often employed by MNEs to reduce overall tax burdens by shifting profits to low-tax jurisdictions and utilizing deductible payments.⁴² While beneficial to an MNE’s competitive edge, the BEPS 2.0 Project sought to address the consequences of billions lost in annual government revenue and the disproportionate impact on economically developing nations, which rely heavily on taxation for creating and expanding basic infrastructure.⁴³

35. See *Guide to MiCA & TFR: How Crypto Regul. Affect Business*, FRAC TAL ID (Oct. 3, 2022), <https://web.fractal.id/guide-to-mica-tfr-how-crypto-regulations-affect-businesses/> [https://perma.cc/F938-AD2K].

36. See Icon Partners, *How to Succeed in the CASP License in 2025?*, MEDIUM (Jan. 21, 2025), <https://medium.com/@icon.partners/how-to-succeed-in-the-casp-licence-in-2025-c0705aa651d6> [https://perma.cc/H6WH-SHV6].

37. OECD, TAX CHALLENGES ARISING FROM DIGITALISATION OF THE ECON. – GLOBAL ANTI-BASE EROSION MODEL RULES (PILLAR TWO) 3 (2021) (hereinafter OECD PILLAR TWO).

38. See generally Lee Hadnum, *Pillar Two Implementation*, OECDPILLARS, (last accessed Oct. 1, 2024), <https://oecdpillars.com/pillar-tab/pillar-two-implementation/> [https://perma.cc/6HU5-W5X9].

39. OECD, TAX CHALLENGES ARISING FROM DIGITALIZATION – REPORT ON PILLAR ONE BLUEPRINT 226 (2020).

40. OECD PILLAR TWO, *supra* note 37, at 60.

41. *Id.* at 8.

42. See generally *Base Erosion and Profit Shifting (BEPS)*, OECD, <https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html> [https://perma.cc/6VUQ-VXDM] (last updated May 28, 2024).

43. *Id.*

III. A Summary on Pillar Two

The Pillar Two Model Rules consist of 10 chapters.⁴⁴ Chapter 1 outlines the scope, Chapters 2-5 outline the main rules, including general Subject-To-Tax-Rules (STTRs), Chapter 6 addresses mergers and acquisitions, Chapter 7 provides special rules for certain tax regimes, Chapter 8 deals with administration, Chapter 9 provides transition rules, and Chapter 10 contains definitions.⁴⁵ While the GloBE Rules are designed to accommodate diverse tax systems, they may not apply to all jurisdictions or individual in-scope MNEs.⁴⁶

Generally, the “Constituent Entities” of an MNE Group encompass all entities within the “Group,” with each permanent establishment considered a separate Constituent Entity.⁴⁷ The location of each Constituent Entity follows local tax treatment.⁴⁸ But GloBE Rules do not apply to taxpayers with no foreign presence or consolidated revenues below €750 million.⁴⁹ Government entities, international organizations, non-profit organizations, pension funds, investment funds, and real estate funds are also exempt, even where an MNE under an exempt entity is subject to the rules.⁵⁰

IV. Calculating Tax Liability

Under GloBE Rules, where an MNE’s effective tax rate, calculated based on the amount of tax it pays relative to its global profits, drops below the fifteen percent GMT, it is required to pay a top-up tax to bring its effective tax rate up to the GMT in every jurisdiction in which it operates.⁵¹

To calculate the effective tax rate (ETR), one must first determine the income of an MNE and then its tax.⁵² The ETR is the jurisdictional sum of the quotient of the entity’s tax and income.⁵³ Chapter 3 specifies that GloBE income or loss should be calculated based on financial accounts harmonized across all jurisdictions.⁵⁴ Certain adjustments are made to align financial accounts with tax calculation purposes, such as removing dividends and equity gains, policy prohibited expenses, differences from the use of multiple currencies,⁵⁵ stock-based compensations,⁵⁶ and international shipping income.⁵⁷

44. OECD PILLAR TWO, *supra* note 37, at 4-5.

45. *Id.* at 7.

46. *See id.*

47. *Id.* at 9.

48. *Id.*

49. *See id.*

50. *See* OECD PILLAR TWO, *supra* note 37, at 29

51. *See id.*

52. *See id.*

53. *Id.* at 28.

54. *Id.* at 15.

55. *Id.* at 15-16.

56. OECD PILLAR TWO, *supra* note 37, at 16.

57. *See id.* at 18.

Chapter 4 calculates the tax attributable to the GloBE income.⁵⁸ The calculation includes income taxes and excludes non-income-based taxes like indirect, payroll, and property taxes.⁵⁹ Rules account for refundable tax credits,⁶⁰ tax impositions in lieu of corporate income taxes,⁶¹ Controlled Foreign Company (CFC) regimes, Permanent Establishments, Tax Transparent Entities, and Hybrid Entity taxes.⁶²

The rules also address temporary differences between financial accounting and tax recognition.⁶³ Deferred tax accounting is leveraged to simplify compliance, with adjustments made to protect the integrity of Pillar Two.⁶⁴ A recapture mechanism is included to address certain deferred tax liabilities that have not been reversed within five years.⁶⁵ This set of rules seeks to ensure that GMT is not owed due to timing differences and to allow for the carry-forward of tax losses.⁶⁶ MNEs not seeking to apply deferred tax accounting can elect to use a simplified methodology for carrying forward GloBE losses.⁶⁷

Once the ETR is calculated, Chapter 5 of the Pillar Two Model Rules determines the amount of top-up tax owed.⁶⁸ The rate of tax owed is the difference between the GMT and the ETR in the jurisdiction used for calculation.⁶⁹ This rate is applied to the GloBE income minus a substance-based income exclusion calculated on tangible assets and payroll costs.⁷⁰ If a jurisdiction has a Qualified Domestic Minimum Top-up Tax (QDMTT) that meets Pillar Two standards, it can eliminate the top-up tax liability when treated as a QDMTT safe harbor.⁷¹ Otherwise, the domestic tax is credited against the GMT liability.⁷²

The Model Rules further outline how to determine which entity group is responsible for the top-up tax, established by two mechanisms in Chapter 2 for determining the group entity liable for the top-up tax: the Income Inclusion Rule (IIR)⁷³ and the Undertaxed Profits Rule (UTPR).⁷⁴ The IIR primary mechanism requires the ultimate parent entity to first pay the GMT in proportion to its ownership interests in low-taxed subsidiaries, and then the tax liability works its way down the hierarchy; the IIR is also applicable to a parent entity with a significant minority interest.⁷⁵

58. See generally *id.* at 22-27.

59. See *id.* at 23.

60. *Id.* at 22.

61. *Id.* at 23.

62. OECD PILLAR TWO, *supra* note 37, at 24.

63. See *id.* at 25.

64. See *id.*

65. *Id.*

66. See *id.*

67. *Id.* at 26.

68. See OECD Pillar Two, *supra* note 37, at 28.

69. See *id.* at 29.

70. *Id.*

71. *Id.* at 29-30.

72. See *id.*

73. *Id.* at 11.

74. OECD Pillar Two, *supra* note 37, at 12-13.

75. See *id.* at 12.

The UTPR, requiring higher levels of jurisdictional and administrative cooperation, serves as a failsafe rule to ensure that the GMT is paid when low-taxed income is held through an ownership structure that avoids taxation under the IIR.⁷⁶ The UTPR imposes adjustments, such as a denial of a tax deduction, to increase subsidiary tax liability and ensure that group entities are proportionately liable in the collective top-up tax liability.⁷⁷ Calculations for UTPR consider the relative share of assets and employees of entity groups to provide equitability in adjustment burdens and enforce liability against entities possessing the financial capacity to pay.⁷⁸

V. Implications of Non-Implementation

Where nations choose not to implement Pillar Two, the cumulative effect of broad international implementation will likely result in MNEs acting to protect international interests that hold risks to national economies.⁷⁹ Should a nation not adopt Pillar Two, widespread global adoption could increase international corporate tax burdens to meet the GMT.⁸⁰ Such nations could also see a reduction in MNE investments.⁸¹ With non-adoption, challenges also arise requiring consideration of national tax laws and tariffs.⁸² National implementation of BEPS 2.0 may be tracked here: <https://oecdpillars.com/pillar-two-tracker/>.⁸³

76. *Id.* at 12-13.

77. *Id.* at 13.

78. *Id.*

79. See generally Alan Cole & Cody Kallen, *Risks to the U.S. Tax Base from Pillar Two*, TAX FOUND. (Aug. 30, 2023), <https://taxfoundation.org/research/all/federal/global-minimum-tax-us-tax-base/> [<https://perma.cc/X9HD-BX6Y>].

80. See Kathy S. Schatz-Guthrie, *US QUEST Rep. Estimates Widespread Pillar Two Adoption Outside the United States Would Result in an 18% Increase in US Multinationals' Corp. Tax Liab., Fewer Jobs and Less Inv.*, EY (July 10, 2023), <https://taxnews.ey.com/news/2023-1107-us-quest-report-estimates-widespread-pillar-two-adoption-outside-the-united-states-would-result-in-an-18-percent-increase-in-us-multinationals-corporate-tax-liability-fewer-jobs-and-less-investment> [<https://perma.cc/4HKS-29JW>].

81. See *id.*

82. See *id.*

83. *Global Pillar Two Developments Tracker*, OECDPILLARS, <https://oecdpillars.com/pillar-two-tracker/> [<https://perma.cc/HY6S-XY9N>] (last visited Feb. 23, 2025).

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Export Controls and Economic Sanctions

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This article discusses the significant legal developments involving export controls and economic sanctions that occurred in 2024.¹

I. U.S. Export Control Developments

A. INTERNATIONAL TRAFFIC IN ARMS REGULATIONS

1. *Revised Definition of “Defense Services” Under the ITAR and New USML Entries*

On July 29, 2024, the U.S. Department of State (State) published a proposed rule to amend the International Traffic in Arms Regulations (ITAR) definition of “defense services.”² Under the proposed rule, “defense services” would include:

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1. Given the publication deadlines, this article generally includes developments occurring between December 1, 2023, and November 30, 2024. The editors declined to include foreign investment controls, namely those administered by the Committee on Foreign Investment in the United States and the U.S. Department of the Treasury’s Outbound Investment Security Program, as that subject is more appropriately covered in other sections of the Year in Review.

2. Int’l Traffic in Arms Regul.: Revisions to Definition and Controls Related to Def. Services, 80 Fed. Reg. 60980 (Jul. 29, 2024) (to be codified at 22 C.F.R. pt. 120).

[A]ssistance, including training or consulting, to foreign persons in the development (including, e.g., design), production (including, e.g., engineering and manufacture), assembly, testing, repair, maintenance, modification, disabling, degradation, destruction, operation, processing, use, or demilitarization of a defense article; or . . . assistance, including training or consulting, to foreign persons, regardless of whether a defense article is involved, as described in USML Category IX(s)(2) or (3).³

Under the proposed rule, the definition would now contain two new references to “disabling” and “degradation.”⁴ According to State, these two references were added to make clear that “the act of harming a military capability through disabling or degradation of defense articles via any method remains controlled.”⁵

The proposed rule also includes language adding new U.S. Munitions List (USML) subparagraphs for military and intelligence assistance where the assistance does not necessarily involve a defense article.⁶ These two categories would be Category IX(s)(2), describing intelligence assistance, and Category IX(s)(3), describing military and paramilitary assistance.⁷ These new categories would feature a “catch and release” method of control whereby the regulations would “catch” a broad range of categories and then specific carve-outs would “release” activities from control.⁸

2. *Australia and United Kingdom Exemption*

State published an interim final rule, effective September 1, amending the ITAR to include an exemption for authorized users in Australia and the United Kingdom as part of the trilateral security partnership with the United States known as “AUKUS.”⁹ The exemption contains specific requirements including, authorized locations, authorized users, and a limitation on what technology and which USML categories qualify for the exemption.¹⁰ For the authorized locations, the transfers must be to or within the physical territories of Australia, the United Kingdom, or the United States.¹¹ The exemption does not apply universally to all end users in Australia and the United Kingdom.¹² Instead, there are several requirements for an end user to be considered an “authorized user” and therefore eligible for the

3. *Id.* at 60985–86.

4. *Id.* at 60981.

5. *Id.*

6. *See generally id.*

7. *Id.* at 60982–83.

8. Int’l Traffic in Arms Regul.: Revisions to Definition and Controls Related to Def. Services, 80 Fed. Reg. at 60982.

9. Int’l Traffic in Arms Regul.: Exemption for Def. Trade and Coop. Among Australia, the United Kingdom, and the United States, 89 Fed. Reg. 67270 (Aug. 20, 2024) (to be codified at 22 C.F.R. pts. 123, 124, 126).

10. *See id.*

11. Int’l Traffic in Arms Regul.: Exemption for Def. Trade and Coop. Among Australia, the United Kingdom, and the United States, 22 C.F.R. § 126.7(b)(1).

12. *See id.*

exemption.¹³ Both the exporter/transferor and the recipient must be: (1) registered with the Directorate of Defense Trade Controls (DDTC) and eligible under ITAR § 120.16 for approvals; (2) a U.S. person, U.S. government department or agency; or (3) a United Kingdom or Australian authorized user identified in the Defense Export Control and Compliance System (DECCS).¹⁴ Additionally, foreign person brokers must be registered, eligible, and identified on the Authorized User List in DECCS.¹⁵ With respect to item limitations, ITAR Supplement No. 2 to Part 126 provides a list, the Excluded Technology List, of the defense articles, services, and technical data that are ineligible for the exemption.¹⁶

3. *Revised Definition of Activities Not Controlled*

On September 16, State's final rule modifying the definition of "activities that are not exports, reexports, retransfers, or temporary imports" went into effect.¹⁷ The final rule added subparagraphs (a)(6) and (7).¹⁸ Subparagraph (a)(6) now provides that taking a defense article subject to the ITAR's reexport or retransfer restrictions on a deployment or training exercise is not an export, reexport, retransfer, or temporary import under the ITAR, provided that (i) there is no change in the end use or end user of the defense article; (ii) the article is transported by and remains in the possession of the authorized armed forces of a foreign government or United Nations military personnel; and (iii) the defense article is not being exported or reexported from or temporarily imported into the United States.¹⁹ Subparagraph (a)(7) now provides that transferring foreign defense articles previously imported into the United States and subsequently exported from the United States pursuant to a license is not considered an export, reexport, retransfer, or temporary import, provided that (i) the foreign defense article was not modified, enhanced, upgraded, or altered to improve it or change the basic performance of the item prior to its return to the country from which it was imported or to a third country; (ii) a U.S.-origin defense article was not incorporated into the foreign defense article; and (iii) the defense article is not being exported from or temporarily imported into the United States.²⁰

13. See 22 C.F.R. § 126.7(b)(2).

14. *Id.*

15. *Id.*

16. Exemption for Def. Trade and Coop. Among Australia, the United Kingdom, and the United States, 89 Fed. Reg. at 67281–87.

17. Int'l Traffic in Arms Regul.: Amendments to the Definition of Activities That Are Not Exports, Reexports, Retransfers, or Temporary Imports, 89 Fed. Reg. 66210 (Aug. 15, 2024) (to be codified at 22 C.F.R. pt. 120).

18. Int'l Traffic in Arms Regul.: Amendments to the Definition of Activities That Are Not Exports, Reexports, Retransfers, or Temporary Imports, 22 C.F.R. § 120.54 (2024).

19. 22 C.F.R. § 120.54(a)(6)(i)–(iii).

20. 22 C.F.R. § 120.54(a)(7)(i)–(iii).

B. EXPORT ADMINISTRATION REGULATIONS

1. *Russia and Russia-Related Controls*

The Bureau of Industry and Security (BIS) continued to expand export controls against the Russian Federation (Russia) related to its further invasion of Ukraine that began in February 2022. On January 23, BIS amended Export Administration Regulations (EAR) Part 746 to expand the Russia and Belarus industrial sector sanctions; modify the license requirements for the Crimea Region of Ukraine; and revise sanctions that target drones supplied by the Islamic Republic of Iran (Iran).²¹ On April 22, BIS expanded the foreign direct product (FDP) rules relating to Russia, Belarus, Iran, and the Crimea Region of Ukraine.²² On April 29, BIS introduced a new License Exception Medical Devices (MED) for EAR99 devices going to or within Russia, Belarus, or the Crimea Region of Ukraine.²³ On June 12, BIS revamped EAR Part 746 to consolidate the trade sanctions that target Belarus and Russia to expand coverage to include EAR99 software and narrow the scope of License Exception Consumer Communications Devices (CCD) for Russia and Belarus.²⁴ On July 24, BIS expanded the Iran FDP rule to cover software and technology for aerospace, lasers and sensors, and marine items.²⁵

BIS also continued to impose end-user restrictions on persons the End User Review Committee accuses of contributing to Russia's invasion of Ukraine. BIS added entities based in Russia, the People's Republic of China (China), and other countries to the Entity List for their alleged involvement in supplying items to Russia's military-industrial sector, including the addition of ninety-three entities on February 23;²⁶ eleven entities on April 11;²⁷ 123 entities on August 27;²⁸ and forty entities on October 30.²⁹

21. Implementation of Additional Sanctions Against Russia and Belarus Under the Export Admin. Regul. (EAR) and Refinements to Existing Controls, 89 Fed. Reg. 4804 (Jan. 25, 2024) (to be codified at 15 C.F.R. pts. 734, 746).

22. Export Control Measures Under the Export Adm. Regul. (EAR) To Address Iranian Aggression Against Israel and Mil. Support for Russia, 89 Fed. Reg. 29254 (Apr. 22, 2024) (to be codified at 15 C.F.R. pt. 746).

23. Amendment to Existing Controls on Russia and Belarus Under the Export Admin. Regul. (EAR) Adding New License Exception Med. Devices (MED); Corrections, 89 Fed. Reg. 33224 (Apr. 29, 2024) (to be codified at 15 C.F.R. pts. 740, 744, 746, 762).

24. Implementation of Additional Sanctions Against Russia and Belarus Under the Export Admin. Regul. (EAR) and Refinements to Existing Controls, 89 Fed. Reg. 51644 (June 18, 2024) (to be codified at 15 C.F.R. pts. 734, 740, 744, 746, 774).

25. Iran Foreign Direct Prod. Rule, 89 Fed. Reg. 60563 (July 26, 2024) (to be codified at 15 C.F.R. pts. 734, 746).

26. Additions of Entities to the Entity List, 89 Fed. Reg. 14385 (Feb. 27, 2024) (to be codified at 15 C.F.R. pt. 744).

27. Addition of Entities to and Revision of Entry on the Entity List, 89 Fed. Reg. 25503 (Apr. 11, 2024) (to be codified at 15 C.F.R. pt. 744).

28. Revisions to the Entity List, 89 Fed. Reg. 68544 (Aug. 27, 2024) (to be codified at 15 C.F.R. pt. 744).

29. Press Release, Bureau of Indus. and Sec., *Commercial Targets Illicit Procurement Networks Supplying Russia's Mil. and Restricts Chemical Precursors Enabling Russia's Use of Chemical Weapons*

2. OFAC Sanctioned Persons

On March 21, BIS began imposing Entity List restrictions against persons that are designated for economic sanctions under fourteen sanctions programs administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC).³⁰ These sanctions programs relate to Russia's invasion of Ukraine, terrorism, weapons of mass destruction, narcotics trafficking and other criminal networks.³¹ These persons also appear on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).³²

3. Proposed End-Use and End-User Restrictions

On July 29, BIS issued a notice of proposed rulemaking to revamp restrictions on military and intelligence end-use and end-users, and activities by U.S. persons.³³ The EAR's military end-use and end-user (MEU) rule under EAR Section 744.21 would expand to include all Country Group D:5 countries and the Special Administrative Region of Macau in China (Macau).³⁴ The scope of items controlled would expand dramatically to include all items subject to the EAR.³⁵ The definition of MEUs would include mercenaries, paramilitaries, and irregular forces, along with the national armed forces and national guard.³⁶ National police, intelligence, and reconnaissance agencies would be removed from the MEU rule; whereas providers of support to MEUs would move to a new EAR Section 744.22 that covers military-support end-users (MSEUs).³⁷ The new MSEU rule would expand coverage similarly to include persons in Country Group D:5 locations and Macau.³⁸ The scope of items would include all items that are controlled under Export Control Classification Numbers (ECCNs).³⁹ EAR Section 744.44 would be renamed to cover "intelligence end-users" (IEUs), which would include all civilian and military intelligence and reconnaissance agencies in Country Groups D and E countries (except for countries that are also listed in Country Groups A:5 and A:6).⁴⁰ BIS would add certain MEUs, MSEUs, and IEUs to the Entity List with footnote designations,

Against Ukraine (Oct. 30, 2024), <https://www.bis.gov/press-release/commerce-targets-illicit-procurement-networks-supplying-russias-military-restricts-chemical-precursors> [https://perma.cc/L3QY-RK2Y].

30. Export Admin. Regul. End-User Controls: Imposition of Restrictions on Certain Persons Identified on the List of Specially Designated Nationals and Blocked Persons (SDN List), 89 Fed. Reg. 20107 (Mar. 21, 2024) (to be codified at 15 C.F.R. pts. 740, 744, 746).

31. *Id.* at 20108.

32. *Id.*

33. End-Use and End-User Based Export Controls, Including U.S. Persons Activities Controls: Military and Intelligence End Uses and End Users, 89 Fed. Reg. 60985 (July 29, 2024) (to be codified at 15 C.F.R. pts. 730, 732, 734, 736, 740, 744).

34. *Id.* at 60988.

35. *Id.*

36. *Id.* at 60989.

37. *Id.*

38. *Id.* at 60988.

39. End-Use and End-User Based Export Controls, 89 Fed. Reg. at 60997.

40. *Id.* at 60990.

potentially including MSEUs located outside of Country Group D:5 and Macau, and potentially with a narrower scope of covered items.⁴¹ The restrictions on U.S. person activities that appear in EAR Section 744.6(b)(5) would expand to include restricted end-users under the new MEU, MSEU, and IEU rules.⁴²

4. *Quantum Computing, Aerospace Technology, and Integrated Circuit Manufacturing*

On September 6, BIS issued an interim final rule to impose worldwide export license requirements under EAR Section 742.4(a)(5) and EAR Section 742.6(a)(10) relating to quantum computing; advanced semiconductor manufacturing equipment; gate all-around field-effect transistor (GAAFET) technology; and additive manufacturing (i.e., 3-D printing).⁴³ BIS added a new License Exception Implemented Export Controls (IEC) under EAR Section 740.24 for certain countries that have implemented similar controls.⁴⁴ BIS provided grandfathering provisions, exclusions for deemed exports and deemed reexports, and a General License to allow certain research and development activities relating to quantum computing and GAAFET technology to continue.⁴⁵ These changes took effect on September 6, but certain exports to Country Group A:1 destinations did not require a license until November 5.⁴⁶

5. *Administrative Enforcement Provisions*

On September 16, BIS modified the enforcement provisions under EAR Part 764 to codify policies announced over the past two years relating to voluntary self-disclosures (VSDs).⁴⁷ Since 2022, BIS has issued policy memoranda that both highlighted the importance of VSDs for significant violations while promising expedited treatment for disclosures of minor violations.⁴⁸ BIS will consider any failure to disclose significant apparent violations through a VSD as an aggravating factor when it assesses monetary penalties for EAR violations.⁴⁹

41. *Id.* at 60997.

42. *Id.* at 60988.

43. Com. Control List Additions and Revisions; *Implementation of Controls on Advanced Tech. Consistent With Controls Implemented by International Partners*, 89 Fed. Reg. 72926 (Sept. 6, 2024) (to be codified at 15 C.F.R. pts. 736, 738, 740, 742, 743, 772, 774).

44. *Id.* at 72927–28.

45. *Id.* at 72926.

46. *Id.* at 72937.

47. Admin. and Enf't Provisions, 89 Fed. Reg. 75477 (Sept. 16, 2024) (to be codified at 15 C.F.R. pts. 764, 766).

48. Bureau of Indus. & Sec., U.S. Dep't of Com., *Commercial Implements Regulations Changes to Voluntary Self-Disclosure Process and Penalty Guidelines; Names Raj Parekh as First-Ever Chief of Corporate Enforcement* (Sept. 12, 2024), <https://www.bis.gov/press-release/commerce-implements-regulatory-changes-voluntary-self-disclosure-process-penalty-guidelines-names-raj> [<https://perma.cc/89CK-RL97>].

49. See Admin. and Enf't Provisions, 89 Fed. Reg. 75477.

II. U.S. Economic Sanctions Developments

A. RUSSIA

In response to Russia's continuing war against Ukraine, the United States imposed sanctions on hundreds of individuals, companies, and groups in 2024.⁵⁰ The United States and its allied partners also continued to utilize various other sanctions authorities to degrade Russia's ability to wage war.⁵¹ For example, on December 22, 2023, President Biden issued Executive Order (E.O.) 14114, *Taking Additional Steps with Respect to the Russian Federation's Harmful Activities*,⁵² amending E.O. 14024⁵³ and authorizing secondary sanctions on foreign financial institutions (FFIs), determined to have engaged (i) in any significant transaction(s) with any person sanctioned under the Russian Harmful Foreign Activities Sanctions program "for operating or having operated in the technology, defense and related materiel, construction, aerospace, or manufacturing sectors of the Russian Federation economy [specified sectors], or other such sectors as may be determined to support Russia's military-industrial base" or (ii) in any significant transaction(s) or providing any service related to the sale, supply, or transfer to the Russian Federation of items determined to be critical to Russia's military-industrial base (specified items).⁵⁴ In parallel, the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) issued a Determination Pursuant to Section 11(a)(ii) of E. O. 14024 identifying specified items noted above,⁵⁵ and issued a compliance advisory to FFIs with respect to engaging in transactions involving specified sectors or specified items.⁵⁶

On June 12, OFAC announced additional Russia-related sanctions measures, revising the definition of "Russia's military-industrial base" to cover all persons blocked pursuant to E.O. 14024.⁵⁷ As a result, any transactions with such entities

50. Press Release, U.S. Dep't of the Treasury, *As Russia Completes Transition to a Full War Econ., Treasury Takes Sweeping Aim at Foundational Fin. Infrastructure and Access to Third Country Support* (June 12, 2024), <https://home.treasury.gov/news/press-releases/jy2404> [<https://perma.cc/Z3YZ-3RNQ>].

51. See *id.*

52. Exec. Order No. 14114, 88 Fed. Reg. 89271 (Dec. 26, 2023).

53. *Id.*; see also Exec. Order No. 14024, 86 Fed. Reg. 20249 (Apr. 19, 2021).

54. Exec. Order No. 14114, 88 Fed. Reg. 89271-72. Office of Foreign Assets Control, U.S. Dep't of Treasury, FAQ No. 1147: *How Does Executive Order (E.O.) 14114 Amend E.O. 14024, "Blocking Property with Respect to Specified Harmful Foreign Activities of the Gov't of the Russian Fed'n"?* (Dec. 22, 2023), <https://ofac.treasury.gov/faqs/1147> [<https://perma.cc/4APQ-J2GT>].

55. Publication of Russian Harmful Foreign Activities Sanctions Regul. Determinations, 89 Fed. Reg. 78245 (Sept. 25, 2024) (to be codified at 31 C.F.R. pts. 587) (designating "specified items" including machine tools and manufacturing equip., semiconductor manufacturing. materials and electronics, and electronic test equip.).

56. U.S. Dep't of the Treasury, Office of Foreign Assets Control, *Updated Guidance for Foreign Fin. Inst. on OFAC Sanctions Authorities Targeting Support to Russia's Military-Industrial. Base* (June 12, 2024) (describing compliance obligation for FFIs).

57. Office of Foreign Assets Control, U.S. Dep't of the Treasury, FAQ No. 1151: *How does OFAC intend to interpret the following terms in Executive Order (E.O.) 14024, as amended by E.O. 14114: "foreign financial institution," "Russia's military-industrial base," and "significant transaction or transactions"?* (Dec. 22, 2023), <https://ofac.treasury.gov/faqs/1151> [<https://perma.cc/AFP4-NJUR>];

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

370 THE YEAR IN REVIEW

[VOL. 59]

by FFIs are now subject to secondary sanctions.⁵⁸ This sanctions package also included a new determination pursuant to Section 1(a)(ii) of E.O. 14071, *Prohibition on Certain Information Technology and Software Services*, generally prohibiting U.S. persons from providing IT consultancy or design services, or cloud-based services for “Covered Software” (i.e., enterprise management software and design and manufacturing software), to any person located in the Russian Federation.⁵⁹ In parallel, OFAC also issued a number of targeted designations against Russian sanctions evasion networks.⁶⁰

B. VENEZUELA

The United States took several actions to roll back prior sanctions relief provided to Venezuela.⁶¹ On January 29, OFAC revoked a General License (GL) that had suspended Venezuela-related sanctions involving the state-owned gold mining company, Minerven.⁶² Further, on April 17, OFAC revoked a GL that authorized transactions related to oil and gas sector operations in Venezuela, including transactions involving the state-owned Petróleos de Venezuela, S.A. (PdVSA).⁶³ In both instances, OFAC issued temporary GLs authorizing the wind-down of transactions authorized by the revoked GLs.⁶⁴

C. IRAN

In response to continued Iranian government support for malign activities around the world, OFAC sanctioned a wide range of Iranian entities and proxies.⁶⁵ For example, OFAC issued an extensive set of sanctions designations targeting various parties identified as supporting Russia’s military, including Iran’s Ministry of

Office of Foreign Assets Control, U.S. Dep’t of the Treasury, FAQ No. 1181: *Effective June 12, 2024, how is Treasury interpreting Russia’s military-industrial base under section 11 of Executive Order (E.O.) 14024, as amended by E.O. 14114?* (June 12, 2024), <https://ofac.treasury.gov/faqs/1181> [<https://perma.cc/CA2K-J8RU>].

58. OFAC, FAQ No. 1151, *supra* note 57.

59. Press Release, U.S. Dep’t of the Treasury, Determination Pursuant to Section 1(a)(ii) of Executive Order 14071: Prohibition on Certain Info. Tech. and Software Serv. (June 12, 2024).

60. Press Release, U.S. Dep’t of the Treasury, *supra* note 50.

61. U.S. Dep’t of the Treasury, Office of Foreign Assets Control, *Frequently Asked Questions Related to the Suspension of Certain U.S. Sanctions with Respect to Venezuela on October 18, 2023* (updated Apr. 17, 2024).

62. *Id.*

63. *Id.*

64. *Id.*; U.S. Dep’t of the Treasury, Office of Foreign Assets Control, General License No. 43A: *Authorizing the Wind Down of Transactions Involving CVG Compania General de Minería de Venezuela CA* (Jan. 29, 2024); U.S. Dep’t of the Treasury, Office of Foreign Assets Control, General License No. 44A: *Authorizing the Wind Down of Transactions Related to Oil or Gas Sector Operations in Venezuela* (Apr. 17, 2024).

65. See Press Release, U.S. Dep’t of the Treasury, *Treasury Targets Networks Facilitating Illicit Trade and UAV Transfers on Behalf of Iranian Military* (Apr. 25, 2024), <https://home.treasury.gov/news/press-releases/jy2295> [<https://perma.cc/F8VG-5Y5K>].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

EXPORT CONTROLS & ECONOMIC SANCTIONS 371

Defense and Armed Forces Logistics and Iran Air.⁶⁶ OFAC also targeted Iranian sanctions evasion involving designated terrorist organizations, sanctioning various individuals, companies, and vessels identified as generating revenue for terrorist groups and the Islamic Revolutionary Guard Corps-Quds Force through shipping Iranian commodities to Yemen, the U.A.E., and China.⁶⁷

D. CHINA

As part of its efforts to enforce sanctions on Russia, OFAC stepped up efforts against sanctions evasion networks based in China.⁶⁸ In this regard, OFAC targeted China-based entities engaged in providing arms, machine tools, dual-use electronics, UAV components, and other critical battlefield materiel to Russia.⁶⁹ OFAC also took a number of actions to target parties in China engaging in activities to evade sanctions against the Democratic People's Republic of Korea (DPRK), including designations of parties for facilitating financial transactions in support of DPRK weapons of mass destruction programs⁷⁰ and entities engaging in procurement of components and technology for the DPRK ballistic missile and space programs.⁷¹

III. Notable U.S. Enforcement Cases

A. ITAR ENFORCEMENT

In 2024, DDTC announced four major administrative settlements, summarized as follows:

1. *The Boeing Company*

On February 29, DDTC concluded a fifty-one million administrative settlement with The Boeing Company (Boeing) to resolve 199 violations of the Arms Export Control Act (AECA) and the ITAR.⁷² Boeing voluntarily disclosed its violations,

66. See *id.*; Press Release, U.S. Dep't of the Treasury, *Treasury Designates Actors Facilitating Iran's Transfer of Lethal Aid to Russia* (Sept. 10, 2024), <https://home.treasury.gov/news/press-releases/jy2570> [https://perma.cc/P28L-TZXH].

67. See Press Release, U.S. Dep't of the Treasury, *Treasury Adds Further Sanctions Targeting Houthi and Hizballah Trade Networks* (Aug. 15, 2024), <https://home.treasury.gov/news/press-releases/jy2538> [https://perma.cc/4GYW-XE3F].

68. See Press Release, U.S. Dep't of the Treasury, *U.S. Continues to Degrade Russia's Military Industrial Base and Target Third-Country Support with Nearly 300 New Sanctions* (May 1, 2024), <https://home.treasury.gov/news/press-releases/jy2318> [https://perma.cc/LH88-HH3E].

69. See *id.*

70. See Press Release, U.S. Dep't of the Treasury, *Treasury Sanctions Actors Financing the North Korean Weapons of Mass Destruction Program* (Mar. 27, 2024), <https://home.treasury.gov/news/press-releases/jy2215> [https://perma.cc/XWK3-LR9Y].

71. See Press Release, U.S. Dep't of the Treasury, *Treasury Targets PRC-based Procurement Network Supporting DPRK Ballistic Missile and Space Programs* (July 24, 2024), <https://home.treasury.gov/news/press-releases/jy2482> [https://perma.cc/EP55-N5JH].

72. Press Release, U.S. Dep't of State, *U.S. Department of State Concludes \$51 Million Settlement Resolving Export Violations by The Boeing Company* (Feb. 29, 2024), <https://2021-2025.state.gov/u-s->

which included unauthorized exports and retransfers of technical data to foreign person employees and contractors; unauthorized exports of defense articles, including technical data to China; and violations of license terms, conditions, and provisos of DDTC authorizations.⁷³ Under the terms of the Consent Agreement, Boeing agreed to pay a civil penalty of fifty-one million dollars.⁷⁴ DDTC agreed to suspend twenty-four million of this amount on the condition that the funds be used for approved remedial compliance measures to strengthen Boeing's compliance program.⁷⁵ In addition, Boeing must also engage an external Special Compliance Officer for at least twenty-four months to oversee the Consent Agreement, which will require two external audits of its ITAR compliance program and its implementation of additional compliance measures.⁷⁶

2. *RTX and Certain Subsidiaries*

On August 30, DDTC concluded a \$200 million administrative settlement with RTX Corporation (RTX) and its subsidiaries, including Collins Aerospace,⁷⁷ to resolve 750 violations of the AECA and the ITAR.⁷⁸ RTX voluntarily disclosed its violations, which included unauthorized exports of classified and misclassified defense articles; unauthorized exports of defense articles by employees via hand-carry to proscribed destinations; and violations of terms, conditions, and provisos of DDTC authorizations.⁷⁹ The most egregious violations included unauthorized exports of technical data to China to facilitate procurement of defense articles from Chinese entities, with the majority of violations resulting from jurisdiction and classification errors.⁸⁰

In the Consent Agreement, RTX agreed to pay a civil penalty of \$200 million, with⁸¹ \$100 million of this amount suspended on the condition that the funds be

department-of-state-concludes-51-million-settlement-resolving-export-violations-by-the-boeing-company/ [https://perma.cc/QB9Q-6VTX].

73. See Proposed Charging Letter in the Matter of The Boeing Company, U.S. Dep't of State, Bureau of Pol.-Mil. Affs. (last visited Mar. 27, 2025), https://d6jxgaftxvagq.cloudfront.net/Uploads/q/1/m/boeingchargingletter_840411.pdf [https://perma.cc/YL8G-APHW].

74. U.S. Dep't State, *Bureau Pol.-Mil. Affs, Consent Agreement in the Matter of The Boeing Company* (Feb. 28, 2024), [https://foleyhoag.com/getmedia/ad73b6fd-fe64-4ad4-b4d8-c08278368551/Consent-Agreement-Boeing-20240228-\(1\).pdf](https://foleyhoag.com/getmedia/ad73b6fd-fe64-4ad4-b4d8-c08278368551/Consent-Agreement-Boeing-20240228-(1).pdf) [https://perma.cc/CKR3-V53M].

75. *Id.* at 12.

76. *Id.* at 4, 10.

77. See Proposed Charging Letter in the Matter of RTX, U.S. Dep't State, Bureau Pol.-Mil. Affs. at 3-4 (last visited Mar. 27, 2025) https://d6jxgaftxvagq.cloudfront.net/Uploads/z/o/u/proposedchargingletterrtx20240829_165320.pdf [https://perma.cc/7M6A-RBTU].

78. Press Release, U.S. Dep't of State, *U.S. Department of State Concludes \$200 Million Settlement Resolving Export Violations by RTX Corporation* (Aug. 30, 2024), <https://2021-2025.state.gov/u-s-department-of-state-concludes-200-million-settlement-resolving-export-violations-by-rtx-corporation/> [https://perma.cc/BCA5-H3WP].

79. *Id.*

80. U.S. Dep't State, Bureau Pol.-Mil. Affs, *supra* note 77, at 4.

81. See Consent Agreement in the Matter of RTX, U.S. Dep't State, Bureau Pol.-Mil. Affs. at 12-13 (Aug. 29, 2024), https://www.pmdtc.state.gov/sys_attachment.do?sys_id=3c6068ca979-0565467b1791ad053aff2 [https://perma.cc/R8XJ-C45T].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

EXPORT CONTROLS & ECONOMIC SANCTIONS 373

used for approved remedial compliance measures to strengthen RTX's compliance program.⁸² In addition, RTX must also engage an external Special Compliance Officer for at least twenty-four months to oversee the Consent Agreement, which will require at least one external audit of its ITAR compliance program and its implementation of additional compliance measures.⁸³

3. *Precision Castparts Corp.*

On October 2, DDTC concluded a three million administrative settlement with Precision Castparts Corp. (PCC) to resolve twenty-four violations of the AECA and the ITAR.⁸⁴ PCC voluntarily disclosed its violations, consisting of unauthorized exports of technical data to foreign person employees.⁸⁵ Under the terms of the Consent Agreement, PCC agreed to pay a civil penalty of three million dollars, with one million of this amount suspended on the condition that the funds be used for approved remedial compliance measures to strengthen PCC's compliance program.⁸⁶ In addition, PCC must also appoint an internal Special Compliance Officer for at least three years to oversee the Consent Agreement, which will require one external audit of its ITAR compliance program and its implementation of additional compliance measures.⁸⁷

4. *Raytheon*

On October 16, Raytheon Company (Raytheon), a subsidiary of RTX, entered into a separate three-year deferred prosecution agreement with the U.S. Department of Justice (DOJ) in connection with Foreign Corrupt Practices Act (FCPA) and ITAR investigation.⁸⁸ Between approximately 2012 and 2016, Raytheon engaged in a scheme to willfully violate the AECA and the ITAR by failing to disclose to DDTC fees and commissions paid in connection with two Qatar-related contracts.⁸⁹ Specifically, Raytheon paid bribes to a high-level Qatar Emiri Air Force official through sham subcontracts to obtain lucrative defense contracts, and then concealed the bribe payments by falsifying documents to the government.⁹⁰

82. *Id.*

83. *Id.* at 4, 11.

84. See Proposed Charging Letter in the Matter of Precision Castparts Corp., U.S. Dep't State, Bureau Pol.-Mil. Affs. at 4 (last visited Mar. 27, 2025), https://www.pmdtdtc.state.gov/sys_attachment.do?sys_id=52a07c224701d21827972464336d4375 [<https://perma.cc/JJ6M-RR28>]; see also Consent Agreement in the Matter of Precision Castparts Corp., U.S. Dep't State Bureau Pol.-Mil. Affs. (Oct. 2, 2024), https://www.pmdtdtc.state.gov/sys_attachment.do?sys_id=a5a07c224701d21827972464336d436e [<https://perma.cc/N39W-N4N4>].

85. U.S. Dep't State, Bureau Pol.-Mil. Affs., *supra* note 84, at 3.

86. U.S. Dep't State, Bureau Pol.-Mil. Affs., *supra* note 84, at 12-13.

87. *Id.* at 4, 11.

88. See Press Release, U.S. Dep't Just., *Raytheon Company to Pay Over \$950 Million in Connection With Foreign Bribery, Export Control and Defective Pricing Schemes* (Oct. 16, 2024), <https://www.justice.gov/usao-edny/pr/raytheon-company-pay-over-950-million-connection-foreign-bribery-export-control-and> [<https://perma.cc/S37V-B9XH>].

89. *Id.*

90. *Id.*

The FCPA and ITAR investigation was conducted by the U.S. Department of Homeland Security, Homeland Security Investigations and the Federal Bureau of Investigation's International Corruption Unit.⁹¹ Although Raytheon cooperated with the investigation, it did not receive full cooperation credit because it initially failed to provide information relevant to the ITAR violations beyond what was requested in the FCPA investigation.⁹² Accordingly, the ultimate ITAR-related financial penalty of \$21,904,850 includes a cooperation and remediation credit.⁹³

Separate from the FCPA and ITAR investigation, Raytheon also entered into a deferred prosecution agreement in connection with criminal charges of major fraud against the United States, after Raytheon admitted to engaging in two separate schemes to defraud the U.S. Department of Defense in connection with the provision of defense articles and services, including PATRIOT missile systems and a radar system.⁹⁴ Raytheon also reached a separate FCPA settlement related to its defective pricing schemes.⁹⁵ Together, Raytheon's criminal and civil penalties total over \$950 million.⁹⁶ The deferred prosecution agreements with the DOJ additionally ensure that the appropriate federal agencies can proceed with determining whether Raytheon or any other individuals or entities associated with the company should be suspended or debarred as federal contractors.⁹⁷

B. EAR ENFORCEMENT

Dynamic and noteworthy events defined EAR enforcement in 2024: BIS (1) continued the drumbeat of U.S. government guidance and warnings regarding diversion risks, (2) highlighted a rediscovered, more flexible "high-probability" standard of "knowledge" and brought a corporate enforcement action based on this theory, and (3) appointed its first-ever Chief for Corporate Enforcement with a mandate to move forward with corporate enforcement already underway with the DOJ.⁹⁸ Individual enforcement actions brought by the DOJ with BIS' support identify several "red flags" that U.S. exporters and manufacturers should consider in evaluating potential enhancements to their export controls compliance programs.⁹⁹

91. *Id.*

92. *Id.*

93. See U.S. Dep't of Just., *supra* note 88.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. October Global Trade Brief, Newsletter, DESCARTES OCR (Nov. 4, 2024), https://www.ocr-inc.com/trade_briefs/ocr-global-trade-brief-october-2024/ [<https://perma.cc/C3VX-P4E8>].

99. See Bureau of Industry and Security Issues New Guidance to Financial Institutions on Best Practices for Compliance with the Export Administration Regulations, U.S. Dep't Com., Bureau Indus. Sec. (Oct. 9, 2024), <https://www.bis.gov/media/documents/guidance-financial-institutions-best-practices-compliance-export-administration.pdf> [<https://perma.cc/QU8E-8AP4>]; see also Press release, U.S. Dep't Com., Bureau Indus. Sec., Commerce Implements Regulatory Changes to Voluntary Self-Disclosure Process and Penalty Guidelines; Names Raj Parekh as First-Ever Chief of Corporate Enforcement (Sept. 12, 2024), <https://www.bis.gov/press-release/commerce-implements-regulatory-changes-voluntary-self-disclosure-process-penalty-guidelines-names-raj> [<https://perma.cc/4SUL-355U>].

1. *New Enforcement Guidance*

In 2024, BIS continued to issue guidance for industry on enforcement and due diligence expectations, issuing nearly a dozen guidance documents on its own, jointly with other U.S. agencies, or as part of multinational efforts.¹⁰⁰

Two such guidance documents stand out. First, BIS issued guidance on July 10 that explained certain U.S. government communications notifying companies of diversion risk.¹⁰¹ The guidance included the following summary chart for the expected due diligence steps in response to “Supplier List” letters, “Project Guardian” requests, “Red Flag” letters, “Is Informed” letters, and dealings with parties on public screening lists:¹⁰²

Responsibilities in Response to BIS Identification of Parties/Transactions of Concern					
	Supplier List	Project Guardian Request	“Red Flag” Letter	“Is Informed” Letter	Publicly Proscribed Party
Action	Identification of parties of diversion concern	BIS notification of red flag (i.e., knowledge of high probability that a violation may occur)		Individual notice of a license requirement	Dependent upon requirements of list (e.g., license requirement for parties on Entity List)
Who is impacted	Recipient of letter or other publicly available information	Recipient of BIS Project Guardian request	Recipient of BIS “red flag” letter	Recipient of BIS “is informed” letter	Any person involved in a transaction subject to the EAR
Responsibility	Determine whether any red flags are present and if present, resolve before proceeding	Resolve red flags to proceed		Submit license application as required by letter	Submit license application if required by EAR or comply with other EAR requirements

Second, on October 9, BIS issued export control guidance for financial institutions (FIs). This guidance highlighted General Prohibition Ten (GP 10),¹⁰³ which prohibits any U.S. person, including FIs, from financing or otherwise servicing (among other actions) an item “subject to the EAR” “with knowledge that a violation of the [EAR] . . . has occurred, is about to occur, or is intended to occur in connection with the item.”¹⁰⁴ Under GP 10, like the rest of the EAR, knowledge may be proven by an awareness of a “high probability” that a violation has, or is

100. Descartes, *supra* note 98.

101. See Press Release, U.S. Dep’t Com., Bureau Indus. Sec., Export Enforcement: 2024 Year in Rev. (Jan. 2, 2025), <https://www.bis.gov/media/documents/bis-export-enforcement-year-review-2024> [<https://perma.cc/CXK2-3ARG>].

102. Press Release, U.S. Dep’t Com., Bureau Indus. Sec., *BIS Issues Guidance on Addressing Export Diversion Risks* (July 10, 2024), <https://www.bis.gov/press-release/bis-issues-guidance-addressing-export-diversion-risks> [<https://perma.cc/SUY2-SJ57>].

103. *Id.* at 5.

104. Press Release, U.S. Dep’t Com., Bureau of Indus. and Sec., *BIS Issues Guidance to Financial Institutions on Best Practices for Compliance with the Export Administration Regulations* (Oct. 9, 2024), <https://www.bis.gov/press-release/bis-issues-guidance-financial-institutions-best-practices-compliance-export> [<https://perma.cc/ZVQ9-6QGX>].

about to, occur.¹⁰⁵ The guidance provides BIS's expectations for the limited due diligence that FIs can realistically conduct in real time and explains under what circumstances BIS would expect enhanced due diligence—and what that would entail—beyond real-time screening.¹⁰⁶

This emphasis on the “high probability” standard demonstrates BIS' intention to enforce the EAR as vigorously as the DOJ has enforced, for the past two decades, the FCPA, which includes the same “high probability” standard in the context of bribes paid through third-party intermediaries.¹⁰⁷

2. *Corporate Enforcement*

BIS put its July 10 guidance into action, announcing a \$5,800,000 civil penalty against TE Connectivity Corporation, located in Pennsylvania, and TE Connectivity HK Limited, located in Hong Kong (collectively, TE) on August 15.¹⁰⁸ According to the settlement, TE violated the EAR by exporting items to BIS Entity List parties in China and for restricted use in unmanned aerial vehicles (UAVs).¹⁰⁹ BIS stressed the “high probability standard” and various catch-all provisions of the EAR in the charges against TE, which require a license for the export of any item subject to the EAR, including for ubiquitous, catalogue “EAR99” dual-use items.¹¹⁰

On September 12, BIS announced the appointment of its first-ever Chief of Corporate Enforcement, with the mandate to “advance significant corporate investigations” in coordination with the DOJ, “further reflecting BIS's commitment to this effort.”¹¹¹

3. *Individual Enforcement*

In 2024, BIS supported numerous individual prosecutions, primarily through its participation in the Disruptive Technology Strike Force with the DOJ.¹¹² DOJ

105. 15 C.F.R. § 736.2(b)(10) (2025).

106. DEP'T OF COM., BUREAU OF INDUS. AND SEC., BUREAU OF INDUS. AND SEC. ISSUES NEW GUIDANCE TO FINANCIAL INSTITUTIONS ON BEST PRACTICES FOR COMPLIANCE WITH THE EXPORT ADMINISTRATION REGULATIONS, 2 (2024), <https://www.bis.gov/media/documents/guidance-financial-institutions-best-practices-compliance-export-administration> [<https://perma.cc/HR7W-MDAS>].

107. *Id.*

108. *Id.*

109. Press Release, U.S. Dep't Com., Bureau Indus. Sec., *BIS Imposes \$5.8 Million Penalty Against Pennsylvania Company for Shipments of Low-Level Items to Parties Tied to the PRC's Hypersonics, UAV, and Military Electronics Programs* (Aug. 15, 2024), <https://www.bis.gov/press-release/bis-imposes-5.8-million-penalty-against-pennsylvania-company-shipments-low-level-items-parties-tied-prcs> [<https://perma.cc/XG6E-Q9Y6>].

110. U.S. Dep't State, Bureau Pol.-Mil. Affs., *Order Relating TE Connectivity Corp. and TE Connectivity HK Limited 2* (Aug. 13, 2024), <https://efoia.bis.doc.gov/index.php/documents/export-violations/export-violations-2024/1625-e2953-te-connectivity-settlement-agreement/file> [<https://perma.cc/4YDF-7SGC>].

111. See *id.* at 4–5.

112. Press Release, U.S. Dep't Com., Bureau Indus. Sec., *Commerce Implements Regulatory Changes to Voluntary Self-Disclosure Process and Penalty Guidelines; Names Raj Parekh as First-Ever Chief*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

EXPORT CONTROLS & ECONOMIC SANCTIONS 377

enforcement is discussed in more detail below, but it is worth highlighting here some scenarios that BIS would likely consider as carrying a “high probability” of diversion:

- The re-shipment of blocked components to a business registered at a Tandoori restaurant;¹¹³
- General trading companies in free trade zones being presented as the ultimate end-users for heavy drilling or mining equipment;¹¹⁴
- Purported operational addresses that are residential;¹¹⁵
- Snow machines with a purported end use in Hong Kong;¹¹⁶
- A Kansas-based company named “KanRus” continuing impermissible shipments to Russia despite claiming their exports were being sent to other countries;¹¹⁷
- Deliberate attempts to circumvent export controls by using freight forwarders and/or falsifying shipping documents;¹¹⁸ and
- The longstanding diversion practice of transiting products through third party countries to obfuscate the ultimate destination of the goods.¹¹⁹

of Corporate Enforcement (Sept. 12, 2024), <https://www.bis.gov/press-release/commerce-implements-regulatory-changes-voluntary-self-disclosure-process-penalty-guidelines-names-raj> [<https://perma.cc/6K5U-2B6F>].

113. Press Release, U.S. Dep’t Com., Bureau Indus. Sec., Export Enforcement: 2024 Year in Review (Jan. 2, 2025), <https://www.justice.gov/archives/opa/pr/fact-sheet-disruptive-technology-strike-force-efforts-first-year-prevent-sensitive> [<https://perma.cc/Z6YA-75VA>].

114. Indictment at ¶¶ 44-47, *USA v. Goltsev et al*, No. 1:23-cr-00452 (E.D.N.Y. Nov. 6, 2023), ECF No. 20; Guilty Plea, *USA v. Goltsev et al*, No. 1:23-cr-00452 (E.D.N.Y. July 9, 2024), ECF No. 66; Guilty Plea, *USA v. Goltsev et al*, No. 1:23-cr-00452 (E.D.N.Y. July 9, 2024), ECF No. 67; See generally New York Dep’t of State, Division of Corp., Entity Info. for SN Electronics, Inc. (showing an address that, per Google Maps, is a tandoori restaurant).

115. Press Release, U.S. Dep’t Just., *Belgian National Charged with Crimes Related to Scheme to Illegally Procure Critical U.S. Technology for End Users in China and Russia* (Dec. 6, 2023), <https://www.justice.gov/archives/opa/pr/belgian-national-charged-crimes-related-scheme-illegally-procure-critical-us-technology-end> [<https://perma.cc/4MQL-644S>].

116. Press Release, U.S. Dep’t Just., *New York Man Pleads Guilty to Conspiracy to Unlawfully Export Dual-Use Electronics Used in Russian Military Drones* (Apr. 30, 2024), <https://www.justice.gov/archives/opa/pr/new-york-man-pleads-guilty-conspiracy-unlawfully-export-dual-use-electronics-used-russian> [<https://perma.cc/L6W5-E7DG>].

117. Press Release, U.S. Dep’t Just., *Two Russia-Born U.S. Citizens Arrested for Conspiring to Send \$500,000 Worth of Luxury Goods to Russia* (June 12, 2024), <https://www.justice.gov/usao-ak/pr/two-russia-born-us-citizens-arrested-conspiring-send-500000-worth-luxury-goods-russia> [<https://perma.cc/GT3H-TWQV>].

118. Press Release, U.S. Dep’t Just., *Vice President of Kansas Company Pleads Guilty to Crimes Related to Scheme to Illegally Export U.S. Avionics Equipment to Russia and Russian End Users* (July 2, 2024) [hereinafter Vice President], <https://www.justice.gov/opa/pr/vice-president-kansas-company-pleads-guilty-crimes-related-scheme-illegally-export-us> [<https://perma.cc/WGR2-66RP>].

119. Press Release, U.S. Dep’t Just., *Russian International Money Launderer Sentenced To Three Years In Prison For Illicitly Procuring Large Quantities Of U.S.-Manufactured Dual-Use, Military Grade Microelectronics For Russian Entities* (July 17, 2024), <https://www.justice.gov/usao-sdny/pr/russian->

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

378 THE YEAR IN REVIEW

[VOL. 59]

Exporters and manufacturers should accordingly consider developing and implementing a methodology for identifying transactions carrying a “high probability” of diversion and, for such transactions, ensuring that risk-based, enhanced due diligence is undertaken.

C. OFAC ENFORCEMENT

From December 1, 2023, through November 30, 2024, OFAC settled nine enforcement cases and issued one penalty, totaling \$39,588,725.¹²⁰ Four matters were voluntarily self-disclosed (including an egregious case),¹²¹ while two non-disclosed matters involved egregious conduct.¹²²

OFAC focused on violative conduct by non-U.S. persons.

Three settlements involved payments through the U.S. financial system: Mondo TV, S.p.a. (Mondo TV),¹²³ Vietnam Beverage Company Limited (VBCL),¹²⁴ and

international-money-launderer-sentenced-three-years-prison-illicitly-procuring
[<https://perma.cc/G5MH-6VYK>].

120. Vice President, *supra* note 118. [Andrea: Citations appear to be off by one. This was not the citation we included in our draft.] See *Civil Penalties and Enforcement Information*, U.S. Dep’t Treas., Off. Foreign Assets Control, <https://ofac.treasury.gov/civil-penalties-and-enforcement-information> (last visited Nov. 19, 2024).

121. See Enft Release, U.S. Dep’t Treas., Off. Foreign Assets Control, *SCG Plastics Co., Ltd. Settles with OFAC for \$20,000,000 for Apparent Violations of the Iranian Transactions and Sanctions Regulations* (Apr. 19, 2024), https://ofac.treasury.gov/recent-actions/20240419_33 [<https://perma.cc/PX4E-XG6S>] [hereinafter *SCG Plastics Co., Ltd.*]; Enft Release, U.S. Dep’t Treas., Off. Foreign Assets Control, *EFG International AG Settles with OFAC for \$3,740,442 for Apparent Violations of Multiple Sanctions Programs* (Mar. 14, 2024), https://ofac.treasury.gov/recent-actions/20240314_33 [<https://perma.cc/GGG9-VR44>]; Enft Release, U.S. Dep’t Treas., Off. Foreign Assets Control, *American Life Insurance Company Settles with OFAC for \$178,421 Related to Apparent Violations of Iranian Transactions and Sanctions Regulations* (Nov. 14, 2024), https://ofac.treasury.gov/recent-actions/20241114_33 [<https://perma.cc/5EH7-NFQ9>] [hereinafter *Am. Life Ins. Co.*]; Enft Release, U.S. Dep’t Treas., Off. Foreign Assets Control, *OFAC Settles with Nasdaq, Inc. for \$4,040,923 Related to Apparent Violations of the Iranian Transactions and Sanctions Regulations Undertaken by Former Armenian Subsidiary* (Dec. 8, 2023), https://ofac.treasury.gov/recent-actions/20231208_33 [<https://perma.cc/5L8H-9QUW>] [hereinafter *Nasdaq, Inc.*].

122. See Enft Release, U.S. Dep’t Treas., Off. Foreign Assets Control, *State Street Bank and Trust Company Settles with OFAC for \$7,452,501 Related to Apparent Violations of the Ukraine/Russia – Related Sanctions Regulations* (July 26, 2024), <https://ofac.treasury.gov/media/933081/download?inline> [<https://perma.cc/TC6V-GPRW>] [hereinafter *State Street Bank and Trust Company*]; Enft Release, U.S. Dep’t Treas., Off. Foreign Assets Control, *OFAC Imposes \$1.1 Million Penalty on an Individual for Violations of the Iranian Transactions and Sanctions Regulations* (Nov. 19, 2024), <https://ofac.treasury.gov/media/933651/download?inline> [<https://perma.cc/6ETY-TYLQ>].

123. See Enft Release, U.S. Dep’t Treas., Off. Foreign Assets Control, *Mondo TV, S.p.a. Settles with OFAC for \$538,000 for Apparent Violations of the North Korea Sanctions Regulations* (June 26, 2024) [hereinafter *Mondo TV, S.p.a.*] <https://ofac.treasury.gov/media/932986/download?inline> [<https://perma.cc/2HK9-3R2G>].

124. See Enft Release, U.S. Dep’t Treas., Off. Foreign Assets Control, *Vietnam Beverage Company Limited settles with OFAC for \$860,000 for Apparent Violations of the North Korea Sanctions Regulations* (Oct. 17, 2024) https://ofac.treasury.gov/recent-actions/20241017_33 [<https://perma.cc/YL94-FYY7>] [hereinafter *Vietnam Beverage Co. Ltd.*].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

EXPORT CONTROLS & ECONOMIC SANCTIONS 379

SCG Plastics Co., Ltd. (SCG Plastics).¹²⁵ Mondo TV paid for animation work by, and settled debts for, a North Korea-owned studio.¹²⁶ VBCL's subsidiaries received USD payments from third parties for alcoholic beverages sold to North Korean customers.¹²⁷ SCG Plastics received payments for plastic resin it sold, and made debt payments, for an Iranian joint venture in an egregious manner (i.e., using false documentation and diversion).¹²⁸

EFG International AG's settlement resolved apparent violations from securities-related transactions conducted by non-U.S. affiliates for customers in Cuba or other U.S. sanctioned persons, involving U.S. custodians' omnibus accounts or other U.S. market participants, including a U.S. subsidiary.¹²⁹

OFAC settled several cases with U.S. companies and imposed a penalty against an individual.¹³⁰

State Street Bank and Trust Company, and its subsidiary, Charles River Systems, Inc. (Charles River) addressed apparent violations of Directive 1 of E.O. 13662 by Charles River knowingly redacting and reissuing invoices and accepting payments "after the expiration of applicable debt tenors."¹³¹

Two settlements involved insurance policies issued to blocked persons.¹³² Privilege Underwriters Reciprocal Exchange's settlement arose from its failure to screen a customer's ownership information resulting in the issuance of four insurance policies to a company owned by a person on the Specially Designated Nationals and Blocked Persons List.¹³³ American Life Insurance Company's settlement arose from three insurance policies issued via its UAE agent to three Government of Iran-owned entities, receipt of premiums, and claims payments by a third-party administrator.¹³⁴

CoinList Markets LLC's settlement resolved apparent violations from transactions processed for Crimean residents.¹³⁵

125. See SCG Plastics Co., Ltd., *supra* note 121.

126. See Mondo TV, S.p.a., *supra* note 123.

127. See Vietnam Beverage Co. Ltd., *supra* note 124.

128. See SCG Plastics Co., Ltd., *supra* note 121 (SCG Plastics voluntarily self-disclosed ten of the 467 apparent violations).

129. See EFG Int'l AG, *supra* note 121 (\$1,000,000 will be suspended upon implementation of certain compliance commitments).

130. See Enft Release, U.S. Dep't Treas., Off. Foreign Assets Control, OFAC Settles with Privilege Underwriters Reciprocal Exchange for \$466,200 Related to Apparent Violations of the Ukraine/Russia Related Sanctions Regulations (Dec. 21, 2024) <https://ofac.treasury.gov/media/932486/download?inline> [<https://perma.cc/JT2Z-JCTU>] [hereinafter Privilege Underwriters].

131. See State Street Bank and Trust Company, *supra* note 122.

132. See Privilege Underwriters, *supra* note 130, and Am. Life Ins. Co., *supra* note 121.

133. See Privilege Underwriters, *supra* note 130.

134. See Am. Life Ins. Co., *supra* note 122.

135. See Enft Release, U.S. Dep't Treas., Off. Foreign Assets Control, OFAC Settles with CoinList Markets LLC for \$1,207,830 Related to Apparent Violations of the Ukraine/Russia-Related Sanctions Regulations (Dec. 13, 2024), <https://ofac.treasury.gov/media/932406/download?inline> [<https://perma.cc/9KJM-EKPE>].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

380 THE YEAR IN REVIEW

[VOL. 59]

Nasdaq, Inc.'s settlement addressed apparent violations by Nasdaq OMX Armenia's operation of credit resource and trading platforms for Armenian banks, including Mellat Armenia, a designated subsidiary of Iran's Bank Mellat.¹³⁶

OFAC imposed a penalty against a U.S. individual for activities in Iran, including funds transfers related to a hotel development, use of blocked bank accounts, and the transfer of real property, which were egregious U.S. sanctions violations.¹³⁷

In December 2023, OFAC and other U.S. government agencies issued the Quint-Seal Compliance Note, advising companies involved in global transportation of goods of tactics to "disguise the nature, origin, or destination of cargo being transported."¹³⁸ Several of these agencies then issued the Tri-Seal Compliance Note, advising foreign entities and individuals of their compliance obligations under U.S. sanctions and export controls and underlining related enforcement actions.¹³⁹ Recently, OFAC issued U.S. sanctions compliance guidance to "maritime sector stakeholders," describing common sanctions evasion tactics by illicit actors.¹⁴⁰

In 2024, OFAC also highlighted FinCEN's whistleblower program, which rewards reports of U.S. sanctions or Bank Secrecy Act violations resulting in monetary penalties greater than \$1,000,000,¹⁴¹ adjusted base and statutory maximum civil monetary penalty amounts for inflation,¹⁴² and increased the statute of limitations from five to ten years for civil and criminal violations of U.S. sanctions laws occurring after April 24, 2019, under the International Emergency Economic Powers Act or the Trading with the Enemy Act.¹⁴³

136. See Nasdaq, Inc., *supra* note 121.

137. See OFAC Imposes \$1.1 Million Penalty on an Individual for Violations of the Iranian Transactions and Sanctions Regul., *supra* note 122.

138. U.S. DEP'T OF COM., U.S. DEP'T OF TREAS., U.S. DEPT. OF JUST., U.S. DEP'T OF STATE & DEP'T OF HOMELAND SEC., QUINT-SEAL COMPLIANCE NOTE: KNOW YOUR CARGO 10 (Dec. 11, 2023), <https://ofac.treasury.gov/media/932391/download?inline> [<https://perma.cc/NPW8-E43K>].

139. U.S. DEP'T OF COM., U.S. DEP'T OF TREAS. & U.S. DEP'T OF JUST., TRI-SEAL COMPLIANCE NOTE: OBLIGATIONS OF FOREIGN-BASED PERSONS TO COMPLY WITH U.S. SANCTIONS AND EXPORT CONTROL LAWS 1 (Mar. 6, 2024), <https://ofac.treasury.gov/media/932746/download?inline> [<https://perma.cc/PV9B-ZKG9>].

140. See OFF. OF FOREIGN ASSETS CONTROL, COMPLIANCE COMMUNIQUÉ: SANCTIONS GUIDANCE FOR MARITIME SHIPPING INDUSTRY 1 (Oct. 31, 2024), <https://ofac.treasury.gov/media/933556/download?inline> [<https://perma.cc/LSD8-JEPB>].

141. See, e.g., EFG Int'l AG, *supra* note 121; Mondo TV, S.p.a, *supra* note 123; Vietnam Beverage Co. Ltd., *supra* note 124; SCG Plastics Co., Ltd., *supra* note 121.

142. See Inflation Adjustment of Civil Monetary Penalties, 89 Fed. Reg. 2139 (proposed Jan. 12, 2024) (to be codified at 31 C.F.R. pts. 50131, 51031, 53531, 53631, 53931, 541).

143. See 21st Century Peace through Strength Act, Pub. L. No. 118-50, div. D, § 3111 (amending 50 U.S.C. §§ 1705(d) and 4315(d)); Enforcement Release, U.S. Dep't Treas., Off. Foreign Assets Control, Guidance on Extension of Statute of Limitations (July 22, 2024), <https://ofac.treasury.gov/media/933056/download?inline> [<https://perma.cc/JW6P-75RM>].

D. DOJ ENFORCEMENT

The DOJ brought criminal enforcement actions against several individuals for violations of export and sanctions laws involving Russia. For example, the DOJ charged Ilya Kahn, a U.S. citizen with Israeli and Russian citizenship, with conspiracy to violate export laws for allegedly exporting semiconductors to a Russian company ELVEES, which OFAC sanctioned in September 2022. The indictment alleged that Mr. Kahn exported these items without a license as required by the EAR, knowing that they were destined for Russia¹⁴⁴ When repeatedly advised that a license would be required to export the items, he allegedly sought to conceal the intended destination by shipping them through Hong Kong and other locations around the world.¹⁴⁵

In another case involving alleged export control violations concerning Russia, Kirill Gordei, a Belarussian citizen and U.S. permanent resident, was charged with conspiracy against the United States, unlawful exportation, and smuggling after allegedly making false claims that his Florida-based company was exporting a mass spectrometer to Uzbekistan, when it was, in fact, destined for Russia.¹⁴⁶

In two other cases, Dmitri and Anastasia Simes, who owned a home in Virginia and now allegedly reside in Russia, were charged with schemes to violate sanctions laws.¹⁴⁷ One indictment, filed against both persons, alleged that they conspired to violate sanctions against Channel One Russia, in connection with Mr. Simes's work as a host of a television show after Channel One Russia became subject to OFAC sanctions.¹⁴⁸ The second indictment, filed against Ms. Simes only, alleged that she conspired to violate sanctions against oligarch Aleksandr Yevgenyevich Udodov.¹⁴⁹

The majority of the remaining criminal enforcement matters involved Iran and China. For example, the DOJ charged Kambiz Eghbali of Los Angeles and two

144. Press Release, U.S. Dep't of Just., Off. of Pub. Aff., *Businessman Arrested for Scheme to Illegally Export Semiconductors and Other Controlled Technology to Russia* (Jan. 18, 2024), <https://www.justice.gov/opa/pr/businessman-arrested-scheme-illegally-export-semiconductors-and-other-controlled-technology> [<https://perma.cc/FM2M-85LW>].

145. *Id.*

146. *Id.*

147. Press Release, U.S. Dep't of Just., Off. of Pub. Aff., *President of Freight Forwarding Company Indicted for Allegedly Smuggling Goods from the United States to Russia* (July 2, 2024), <https://www.justice.gov/opa/pr/president-freight-forwarding-company-indicted-allegedly-smuggling-goods-united-states-russia> [<https://perma.cc/KX2X-VAW8>]; For other examples of criminal cases against owners of U.S. companies, see Press Release, U.S. Dep't of Just., Off. of Pub. Aff., *Virginia Company and Two Senior Executives Charged with Illegally Exporting Millions of Dollars of U.S. Technology to Russia* (Nov. 4, 2024), <https://www.justice.gov/usao-edva/pr/virginia-company-and-two-senior-executives-charged-illegally-exporting-millions> [<https://perma.cc/4QU7-UAST>]; Press Release, U.S. Att'y's Off., D.C., *Russian Citizen Arrested for Illegally Exporting U.S.-Sourced Microelectronics with Military Applications to Russia* (Sept. 16, 2024), <https://www.justice.gov/usao-dc/pr/russian-citizen-arrested-illegally-exporting-us-sourced-microelectronics-military> [<https://perma.cc/ZE7A-LWX5>].

148. Press Release, U.S. Dep't of Just., Off. of Pub. Aff., *TV Presenter Who Worked for Channel One Russia Charged with Violating U.S. Sanctions Imposed on Russia* (Sept. 5, 2024), <https://www.justice.gov/opa/pr/tv-presenter-who-worked-channel-one-russia-charged-violating-us-sanctions-imposed-russia> [<https://perma.cc/Q9SQ-RTTX>].

149. *Id.*

Iranian nationals, Hamid Hajipour and Babak Bahizad, with violations of the International Emergency Economic Powers Act, conspiracy to commit bank fraud, and conspiracy to commit money laundering.¹⁵⁰ The charges stem from an alleged scheme to launder money through the purchase of digital and physical gift cards to transfer money out of Iran to U.S.-based bank accounts.¹⁵¹

In August, the DOJ unsealed an indictment charging U.S.-Iranian national Jeffrey Chance Nader for his alleged role in the export, and attempted export, of aircraft components to Iran.¹⁵² Mr. Nader allegedly acted on purchase orders from Iran to ship the parts to the UAE with knowledge that their ultimate destination was Iran.¹⁵³

The DOJ also reported three enforcement actions against foreign nationals abroad, all involving Iran. An indictment charged Iranian Hossein Hatefi Ardakani and co-defendant Gary Lam with illegally procuring U.S.-manufactured technology for use in Iranian attack drones.¹⁵⁴ According to the charges, Ardakani and Lam used foreign companies, some of which were unwitting, to hide their sanction-evasion efforts.¹⁵⁵ Another indictment charged four Chinese nationals, Baoxia Liu, Yiu Wa Yung, Yongxin Lii, and Yanlai Zhong, with unlawfully exporting and smuggling electronic components and other equipment through front companies, knowing that the components' ultimate destination was for use in the development of Iranian military drones.¹⁵⁶ The DOJ brought three separate cases relating to the same conspiracy to traffic Iranian oil: in the Southern District of New York, seven defendants were charged with sanctions-evasion and other crimes relating to selling Iranian oil to buyers in China, Russia, and Syria; a District of Columbia case alleged a Chinese woman and Omani man evaded sanctions, laundered money, and trafficked Iranian oil to Chinese government-owned refineries; and another DDC action concerned a forfeiture complaint for the seizure of 500,000 barrels of Iranian oil, the proceeds of which are alleged to have been intended for the Iranian Revolutionary Guard Corps.¹⁵⁷

150. *Id.*

151. Press Release, U.S. Dep't of Just., Off. of Pub. Aff., *Dual U.S. and Iranian Citizen Arrested for Unlawful Scheme to Violate and Evade U.S. Sanctions Against Iran* (Oct. 8, 2024), <https://www.justice.gov/opa/pr/dual-us-and-iranian-citizen-arrested-unlawful-scheme-violate-and-evade-us-sanctions-against> [https://perma.cc/3CHB-2HPZ].

152. *Id.*

153. Press Release, U.S. Dep't of Just., Off. of Pub. Aff., *California Man Indicted for Unlawfully Exporting Aircraft Components to Iran* (Aug. 14, 2024), <https://www.justice.gov/opa/pr/california-man-indicted-unlawfully-exporting-aircraft-components-iran> [https://perma.cc/69AT-Q65T].

154. *Id.*

155. Press Release, U.S. Dep't of Just., Off. of Pub. Aff., *Iranian National Charged with Unlawfully Procuring Microelectronics Used in Unmanned Aerial Vehicles on Behalf of the Iranian Government* (Dec. 19, 2023), <https://www.justice.gov/opa/pr/iranian-national-charged-unlawfully-procuring-micro-electronics-used-unmanned-aerial-vehicles> [https://perma.cc/HPX5-TF7L].

156. *Id.*

157. Press Release, U.S. Dep't of Just., Off. of Pub. Aff., *Chinese Nationals Charged with Illegally Exporting U.S.-Origin Electronic Components to Iran and Iranian Military Affiliates* (Jan. 31, 2024), <https://www.justice.gov/opa/pr/chinese-nationals-charged-illegally-exporting-us-origin-electronic-components-iran-and> [https://perma.cc/LZG7-SHWT].

More recently, the DOJ announced a deferred prosecution agreement with Raytheon Company, in which Raytheon agreed to pay over \$950 million to resolve multiple allegations, including one allegation of conspiracy to violate the Arms Export Control Act for willfully failing to disclose payments to a Qatari government official in export license applications to the State Department.¹⁵⁸ According to the charges, Raytheon was required to include this disclosure under Part 130 of the ITAR but did not.¹⁵⁹

Another important criminal enforcement development was the sentencing of Xiaojian Tao, a Chinese-born engineer who was initially charged with export violations, wire fraud, and tax fraud.¹⁶⁰ A federal district judge dismissed the wire fraud charges in March.¹⁶¹ In July, the government agreed to drop the export charges pursuant to a sealed plea agreement.¹⁶² Tao pled guilty to two counts relating to the tax charges and was sentenced to probation in October.¹⁶³

V. Canadian Export Control and Economic Sanctions Developments

In 2024, the Government of Canada continued to expand the targets of its autonomous sanctions while taking steps to address deficiencies in its sanctions guidance and enforcement. The expansion included new sanctions on certain countries, organizations and groups, further Russia-related sanctions, and sanctions on countries such as Belarus.¹⁶⁴ Additionally, Canada created the groundwork for a civil liability regime for sanctions evasion.¹⁶⁵ Regarding export controls, Canada updated its *Export Control List* to include control of certain quantum computing related technologies.¹⁶⁶

158. Press Release, U.S. Dep't of Just., Off. of Pub. Aff., *Justice Department Announces Terrorism and Sanctions-Evasion Charges and Seizures Linked to Illicit, Billion-Dollar Global Oil Trafficking Network That Finances Iran's Islamic Revolutionary Guard Corps and Its Malign Activities* (Feb. 2, 2024), <https://www.justice.gov/opa/pr/justice-department-announces-terrorism-and-sanctions-evasion-charges-and-seizures-linked> [https://perma.cc/9L5Z-TRJU].

159. Press Release, U.S. Dep't of Just., Off. of Pub. Aff., *Raytheon Company to Pay Over \$950M in Connection with Defective Pricing, Foreign Bribery, and Export Control Schemes* (Oct. 16, 2024), <https://www.justice.gov/opa/pr/raytheon-company-pay-over-950m-connection-defective-pricing-foreign-bribery-and-export> [https://perma.cc/45GV-AD7E].

160. *Id.*

161. See *United States v. Tao, et. al.*, No. 5:22-cr-00170, 2022 WL 17365277, at *1 (W.D. Tex., Oct. 4, 2024).

162. *Id.* at *3.

163. See Judgment and Commitment as to Xiaojian Tao at 1, ECF No. 200, *U.S. v. Tao*, No. SA-22-CR-00170 (W.D. Oct. 4, 2024).

164. See *id.* at 2.

165. Stephen Nattrass & Alexander Carden, *Financial Crime and Sanctions Law: 2024 in Review and Looking Ahead*, NORTON ROSE FULBRIGHT (Mar. 4, 2025), <https://www.nortonrosefulbright.com/en/knowledge/publications/2ac8a9da/financial-crime-and-sanctions-law-2024-in-review-and-looking-ahead> [https://perma.cc/W333-KYZR].

166. See Regul. Amending the Special Econ. Measures (Ukraine) Regul., SOR/2024-113 (Can.); Regul. on Special Econ. Measures in Respect of Belarus, SOR/2020-14 (Can.) (amended Mar. 3, 2024), https://www.international.gc.ca/world-monde/international_relations-relations_

A. GUIDANCE FROM GLOBAL AFFAIRS CANADA (“GAC”)

For years, Canada’s business and legal communities have sought more substantive public guidance from the Canadian government on its interpretation of Canada’s sanctions.¹⁶⁷ Demands for that guidance have grown since the major expansion of Canada’s Russia-related sanctions in response to Russia’s 2022 invasion of Ukraine.¹⁶⁸

In April 2024, Global Affairs Canada (GAC), which administers Canada’s economic sanctions, updated its “Frequently Asked Questions” page to provide new guidance in several key areas, specifically: when entities are considered owned or controlled by a sanctioned person; the scope of anti-facilitation provisions; and the rules on indirect dealings with sanctioned persons, including acquiring goods from a non-sanctioned foreign supplier that uses inputs sourced from a sanctioned entity.¹⁶⁹

The new guidance is notable for its expansive interpretations, many of which raise further unanswered questions.¹⁷⁰ One example addresses the question “Can I deal with subsidiaries of a designated [i.e., sanctioned] company?”¹⁷¹ Amendments to Canada’s economic sanctions introduced in 2023 (discussed last year)¹⁷² introduced new rules that deem property of an entity to be the property of a sanctioned person—and therefore subject to dealings prohibitions—when that sanctioned person controls the entity.¹⁷³ Under the amendments, control is established when any of three broad criteria are met, the third of which is that the sanctioned person “is

internationales/sanctions/current-actuelles.aspx?lang=eng (last visited Mar. 25, 2025) [https://perma.cc/G5TA-ATTC].

167. See FASKEN, *New Measures to Combat Sanctions Evasion: Key Takeaways* (July 11, 2024), <https://www.fasken.com/en/knowledge/2024/07/new-measures-to-combat-sanctions-evasion-key-takeaways?m> [https://perma.cc/Q4MJ-U7LZ].

168. See Order Amending the Export Control List, SOR/2024-112 (May 31, 2024), <https://gazette.gc.ca/rp-pr/p2/2024/2024-06-19/html/sor-dors112-eng.html> [https://perma.cc/L2FK-9XH6].

169. See Jesse Goldman & Matthew Kronby, *Missed Guidance: Canada’s New Sanctions FAQs Offer More Questions Than Answers*, OSLER (Apr. 1, 2024), <https://www.osler.com/en/insights/updates/missed-guidance-canada-s-new-sanctions-faqs-offer-more-questions-than-answers/> [https://perma.cc/83EU-CJZM].

170. See *Sanctions: Russian invasion of Ukraine*, GOV’T OF CAN., https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/response_conflict-reponse_conflits/crisis-crisis/ukraine-sanctions.aspx?lang=eng (last visited Mar. 29, 2025), [https://perma.cc/Z7GT-F5UW]; *Advisory to Canadian Businesses on Canada’s Sanctions Related to the Russian Invasion of Ukraine*, GOV’T OF CAN., https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/response_conflict-reponse_conflits/crisis-crisis/ukraine-advisory-directive.aspx?lang=eng (last visited Mar. 29, 2025), [https://perma.cc/HBE6-T5C5150].

171. GLOB. AFF. CAN., *Canadian Sanctions – Frequently Asked Questions*, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/faq.aspx?lang=eng [https://perma.cc/7B8J-EFT7] (last visited Mar. 29, 2025).

172. See *id.*

173. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

EXPORT CONTROLS & ECONOMIC SANCTIONS 385

able, directly or indirectly and through any means, to direct the entity's activities."¹⁷⁴

The guidance in the FAQ addresses the control test, providing the following example (with emphasis added):

A Canadian company is considering the possible sanctions implications of buying goods from a subsidiary of a listed entity. While the designated parent company does not meet the 50% or more ownership criteria of the subsidiary, it is known to exercise considerable influence over its strategic decision-making. Given that at least one of the deemed ownership provisions applies, the subsidiary would be deemed to be owned or controlled by the designated parent company. Consequently, it would be prohibited for the Canadian company to purchase of goods from the subsidiary.¹⁷⁵

The FAQ thus equates the exercise of "considerable influence over [] strategic decision-making" with the ability of a person to direct an entity's activities.¹⁷⁶ Notably, the guidance does not explain what would constitute "considerable influence" nor which decisions of an entity are sufficient to rise to the level of "strategic decision-making[.]"¹⁷⁷ It thereby expands, without clarifying, what is already a vague test in the third criterion of control.¹⁷⁸

Other FAQ guidance advises that it is prohibited for a Canadian company to purchase goods from a non-sanctioned foreign supplier if that supplier uses inputs from a sanctioned Russian company.¹⁷⁹ The guidance does not identify which provisions of Canada's Russia sanctions regulations the purchase would violate, but it appears to be an anti-facilitation provision.¹⁸⁰ Effectively, this could prohibit Canadian businesses from acquiring goods that may have been produced, at any stage of the supply chain, with inputs sourced from a sanctioned person.¹⁸¹ Already in 2024, because Canada had sanctioned the world's largest titanium producer, Russian entity VSMPO,¹⁸² this guidance prompted aircraft manufacturers operating in

174. See John Boscariol, et al., *Export Controls and Economic Sanctions*, 58 YEAR IN REV. 539, 555 (2024).

175. See *id.* at 557. Canada's sanctions amendments introduced three control criteria, any one of which is sufficient to deem a person to control an entity and therefore deemed to own that entity's property: (i) The person holds, directly or indirectly, 50% or more of the ownership interests in the entity or the entity's voting rights; (ii) The person is able, directly or indirectly, to change the composition or powers of the entity's board of directors; and (iii) It is reasonable to conclude, having regard to all the circumstances, that the person is able, directly or indirectly and through any means, to direct the entity's activities. *Id.* (citing Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law), S.C. 2017, c 21, s 2.01 (2017) (Can.)).

176. See Canadian Sanctions: Frequently Asked Questions, *supra* note 172.

177. See *id.*

178. See *id.*

179. See *id.*; Boscariol, *supra* note 163, at 557.

180. Canadian Sanctions: Frequently Asked Questions, *supra* note 171.

181. See *id.*

182. See *id.*

Canada, Bombardier and Airbus, to obtain permits so they could continue to source parts from third countries produced with VSMPO titanium.¹⁸³

Canada's sanctions FAQs "do not have the force of law, nor are they necessarily consistent with the plain wording of the provisions they address".¹⁸⁴ "Nevertheless, because they can be presumed to reflect the positions of Canada's administrative and enforcement authorities", as the VSMPO permits reflect, "they change the risk calculations for Canadian businesses with international supply chains and Canadians employed abroad in foreign businesses."¹⁸⁵

B. EXPANSION OF ECONOMIC SANCTIONS

Economic sanctions remain one of Canada's preferred foreign policy tools.¹⁸⁶ In 2024, Canada introduced sanctions on new countries (Guatemala¹⁸⁷ and Sudan¹⁸⁸); new sanctions related to specific activities by certain groups, (Hamas, related to attacks against Israel,¹⁸⁹ and Israeli extremist settler violence in the West Bank, Gaza and East Jerusalem¹⁹⁰); and continued to expand listings under existing sanctions against Russia,¹⁹¹ Iran,¹⁹² Belarus,¹⁹³ Haiti,¹⁹⁴ and Myanmar.¹⁹⁵ In many cases, these sanctions were introduced or expanded in close coordination with Canada's allies.¹⁹⁶

Canada has also introduced changes to its principal anti-money laundering statute, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA)¹⁹⁷, aimed at addressing both sanctions evasion and the long-standing problem that violations of Canada's sanctions laws can be prosecuted only as criminal offenses, thereby imposing a high standard of proof and partly explaining the paucity of prosecutions.¹⁹⁸ The PCMLTFA allows for civil enforcement, which can

183. See Sanctions: Russian Invasion of Ukraine, *supra* note 171.

184. See Murray Brewster, *House foreign affairs committee to probe decision to waive sanctions on Russian titanium*, CBC NEWS (May 1, 2024, 7:12 PM), <https://www.cbc.ca/news/politics/house-foreign-affairs-probe-titanium-sanctions-waiver-1.7191300> [<https://perma.cc/Q3EY-ZFA6>].

185. See Goldman, *supra* note 158.

186. *Id.*

187. See, e.g., *Consolidated Canadian Autonomous Sanctions List*, GOV'T OF CAN. (last updated Mar. 20, 2025), https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/consolidated-consolide.aspx?lang=eng [<https://perma.cc/6D4L-MV6F>].

188. Special Econ. Measures (Guatemala) Regul., SOR/2024-23 (Can.).

189. Special Econ. Measures (Sudan) Regul., SOR/2024-61 (Can.).

190. Special Econ. Measures (Hamas Terrorist Attacks) Regul., SOR/2024-17 (Can.).

191. Special Econ. Measures (Extremist Settler Violence) Regul., SOR/2024-91 (Can.).

192. Special Econ. Measures (Russia) Regul., SOR/2014-58 (Can.).

193. Special Econ. Measures (Iran) Regul., SOR/2010-165 (Can.).

194. Special Econ. Measures (Belrus) Regul., SOR/2020-21 (Can.).

195. Special Econ. Measures (Haiti) Regul., SOR/2022-226 (Can.).

196. Special Econ. Measures (Burma) Regul., SOR/2007-285 (Can.).

197. See, e.g., Special Econ. Measures (Ukraine) Regul., SOR/2024-113 (Can.).

198. *Proceeds of Crime (Money Laundering) and Terrorist Fin. Act*, S.C. 2000, c. 17 (Can.).

include administrative monetary penalties (AMPs).¹⁹⁹ One amendment to the PCMLTFA introduces a “sanctions evasion offence” reporting requirement.²⁰⁰ Entities with a reporting obligation under the PCMLTFA are required to report to the Financial Transactions and Reports Analysis Centre of Canada when they have reasonable grounds to suspect that a transaction or attempted transaction is related to a “sanctions evasion offence.”²⁰¹

Another PCMLTFA amendment, not yet in force, creates a requirement to declare to the Canada Border Services Agency (CBSA) whether goods being imported or exported are the proceeds of crime or are related to money laundering, financing terrorist activities or sanctions evasion.²⁰² Non-compliance with this requirement will also be subject to AMPs.²⁰³

Canada’s 2024 Budget proposes to provide \$29.9 million over five years for the CBSA to support the implementation of its new authorities under the PCMLTFA.²⁰⁴

C. EXPORT CONTROL LIST

In May 2024, Canada’s *Export Control List*, which identifies the items that are controlled for export from Canada, was amended to add certain technologies respecting quantum computing and its related technology and equipment, as well as advanced semiconductor manufacturing technology and equipment.²⁰⁵

199. See Canada Gazette, Part I, Volume 158, Number 48: *Regulations Amending the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations and the Proceeds of Crimes (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations: Regulatory Statement*, GOV’T OF CAN. (Nov. 30, 2024), <https://gazette.gc.ca/rp-pr/p1/2024/2024-11-30/html/reg1-eng.html> [<https://perma.cc/3UYR-QGKX>] [hereinafter *Regulatory Impact Analysis Statement*].

200. See *id.*

201. See PCMLTFA, S.C. 2000, c. 17, at § 2(1).

202. See Regul. Impact Analysis Statement, *supra* note 200.

203. See *id.*

204. DEP’T OF FIN. CAN., BUDGET 2024, at 314 (2024), <https://budget.canada.ca/2024/home-accueil-en.html> [<https://perma.cc/4Y5P-ZWZP>].

205. See Ord. Amending the Exp. Control List, SOR/2024-112, at § 5506(c).

THE YEAR IN REVIEW
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International Animal Law

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This Article discusses significant legal developments in animal law during 2024.

I. Introduction

The year 2024 has been rife with political controversy, including in the United States election, where animals have become newsworthy in several unusual and interesting ways. The news was riddled with stories about a presidential hopeful having decapitated a dead whale and having placed the carcass of a dead bear in Central Park, a vice-presidential hopeful shooting and killing the family puppy because the puppy spoiled their bird hunt, and another lies about immigrants eating people's pets.¹ These stories demonstrate the ubiquitous presence of animals and their significance to us.

Globally, 2024 brought many important developments in animal law. First, affecting animals in entertainment, Maryland² and Massachusetts³ passed laws prohibiting the use of certain wild animals in circuses and traveling shows. These states join several other states and countries with similar bans.⁴ Further, Connecticut

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1. Seth Milstein, *Selective Outrage About Animals Is Having a Political Moment*, SENTIENT POL'Y (Oct. 11, 2024), <https://sentientmedia.org/selective-outrage-animals-political-moment/> [https://perma.cc/H5PB-KUQL].

2. See generally S. 547, 2024 Regular Sess. (Md. 2024).

3. See generally 2024 Mass. Acts ch. 168.

4. *Bans On Circuses*, FOUR PAWS, <https://www.fourpawsusa.org/campaigns-topics/topics/wild-animals/worldwide-circus-bans> [https://perma.cc/F3LE-24B5] (last visited Nov. 23, 2024).

became the forty-seventh state to ban dog racing⁵ and Colombia banned bull-fighting, leaving only seven countries that allow it.⁶

In research, the use of live animals for cosmetics testing continues to decline with Washington state banning the sale of cosmetics newly tested on animals.⁷ The twelve states with such bans provide greater momentum for the passage of the federal Humane Cosmetics Act, which would make the United States the forty-sixth nation worldwide to pass a law to limit or prohibit animal testing for cosmetic products.⁸ Related to animals in research, in 2022, the International Animal Law Committee Year-in-Review article reported on the rescue of 4,000 beagles from cruel conditions at the Envigo facility in Virginia that breeds beagles for use in research and the related lawsuit filed against Envigo for multiple violations of the Animal Welfare Act.⁹ In June 2024, Envigo pleaded “guilty to animal welfare and pollution crimes and will pay more than \$35M” in fines, including the largest fine ever awarded in an animal welfare case.¹⁰

On the food front, Italy became the first nation in Europe to ban cultivated meat.¹¹ In the United States, similar efforts abound at the state level—in Florida, Michigan, Iowa, Ohio, and Alabama—¹² and at the federal level.¹³ In contrast, the United Kingdom (UK) was the first European country to approve lab-grown meat for pet food while looking to fast-track approval for human consumption.¹⁴ The promotion and growth of cultivated meat would help to eliminate the cruel

5. Press Release, Office of Gov. Ned Lamont, Governor Lamont Signs Law Banning Dog Racing in Connecticut (May 9, 2024), <https://portal.ct.gov/governor/news/press-releases/2024/05-2024/governor-lamont-signs-law-banning-dog-racing-in-connecticut> [<https://perma.cc/BU4Y-MJKL>].

6. Stefano Pozzebon et al., *Colombia's Parliament Has Banned Bullfighting – Leaving Just Seven Nations That Still Permit It*, CNN (May 28, 2024), <https://www.cnn.com/2024/05/28/americas/colombia-bullfight-ban-bill-passed-intl-hnk/index.html> [<https://perma.cc/62DT-SFZM>].

7. Kitty Block & Sara Amundson, *Good News! Washington Becomes 12th State to Ban Sale of Animal-tested Cosmetics*, HUMANE WORLD FOR ANIMALS (Mar. 19, 2024), <https://www.humanesociety.org/blog/washington-state-cosmetics-animal-testing-sales-ban> [<https://perma.cc/98AL-252J>].

8. See *id.*

9. Daina Bray et al., *International Animal Law - International Legal Developments Year in Review: 2022*, AM. BAR ASS'N, INT'L L. SECTION 1, 2 (July 19, 2023) https://www.americanbar.org/groups/international_law/resources/year-in-review/2022/international-animal-law/ [<https://perma.cc/K4CY-Q9RD>].

10. Press Release, U.S. Dep't of Just., Animal Breeder Pleads Guilty to Animal Welfare and Pollution Crimes and Will Pay More than \$35M, Including Record Fine in an Animal Welfare Case (June 3, 2024), <https://www.justice.gov/opa/pr/animal-breeder-pleads-guilty-animal-welfare-and-pollution-crimes-and-will-pay-more-35m> [<https://perma.cc/2UQR-FCGL>].

11. *European Countries Ban Lab Meat in Move to Support Farmers*, TRISTATE LIVESTOCK NEWS (Feb. 1, 2024), <https://www.tsln.com/news/european-countries-ban-lab-meat-in-move-to-support-farmers/> [<https://perma.cc/BW4S-87H8>].

12. Maggie Malson, *Lab Cultivated Meat Making News in Florida and Other States*, DROVERS (Oct. 16, 2024), <https://www.drovers.com/news/industry/lab-cultivated-meat-making-news-florida-and-other-states> [<https://perma.cc/L5DQ-3KHV>].

13. See generally REAL Meat Act of 2024, H.R. 8757, 118th Cong. (2024).

14. Helena Horton, *UK First European Country to Approve Lab-grown Meat, Starting with Pet Food*, GUARDIAN (July 17, 2024), <https://www.theguardian.com/environment/article/2024/jul/17/uk-first-european-country-to-approve-cultivated-meat-starting-with-pet-food> [<https://perma.cc/DJ9C-32W9>].

treatment and slaughter of many billions of animals annually worldwide.¹⁵ Further, in 2024, recognizing the horrible suffering of livestock exported often by sea and across long distances among countries, two countries announced a ban on live animal transport.¹⁶ The UK banned live farm animal export for slaughter or fattening,¹⁷ and Australia announced a five-year phase out plan to end live exports of sheep by May 1, 2028.¹⁸

The recognition of the legal rights of animals gained further traction this year when indigenous leaders across Polynesia granted whales personhood.¹⁹ Belgium became the sixth European Union (EU) member state to include animals in its Constitution stating, “In the exercise of their respective powers, the Federal State, the Communities and the Regions ensure the protection and well-being of animals as sentient beings.”²⁰ They join other nations, including Switzerland, Egypt, Brazil, and India, recognizing animal sentience in their constitutions “emphasizing the moral duty to treat [animals] with care and respect.”²¹ Moreover, relying on prior animal rights rulings in India, India’s Punjab and Haryana High Court rejected a petition to avoid criminal proceedings in the case against a reckless driver who fled the scene after crashing a bus into a group of buffaloes, killing one and injuring another.²² The court noted that animals have rights and cannot be treated as mere property and that their “rights transcend a private settlement entered into by the human parties.”²³

The following sections explore in more depth several important legal developments for animals in 2024. The next section begins with Artificial Intelligence (AI), discussing how AI has and will impact animals’ lives and noting that the law governing AI must begin to consider animals’ interests. The article then highlights octopus farming, an emerging aquaculture industry that raises serious ethical and environmental concerns, and the legal efforts in 2024 taken to ban the industry before it starts. Next, the article surveys the strides made in 2024 worldwide to end fur farming, an industry in decline, which has long harmed animals and the environment. Finally, turning to the courts, the article discusses three notable 2024 cases advancing the law’s protection for animals’ interests. First, a Peruvian

15. *See id.*

16. Animal Welfare (Livestock Exports) Act 2024, HC Bill [11] cl. 1(3) (Gr. Brit.).

17. *See id.* cl. 1(5).

18. *See generally Phase Out of Live Sheep Exports by Sea*, AUSTL. GOV’T, DEP’T AGRIC., FISHERIES & FORESTRY, <https://www.agriculture.gov.au/biosecurity-trade/export/controlled-goods/live-animals/livestock/live-sheep-exports-phase-out> [<https://perma.cc/E7JW-Z34D>] (last visited Nov. 23, 2024).

19. *See generally Ella Flavell, Whale Personhood in Polynesia*, EARTH L. CTR. (July 2, 2024), <https://www.earthlawcenter.org/blog-entries/2024/7/whale-personhood-in-polynesia> [<https://perma.cc/P4FX-7SP3>].

20. *Animal Sentience Included in Belgian Constitution*, EUROGRP. FOR ANIMALS 1, 2 (May 3, 2024), <https://www.eurogroupforanimals.org/news/animal-sentience-included-belgian-constitution> [<https://perma.cc/KPX7-TNLY>].

21. *Id.*

22. Nicole Pallotta, *India’s Punjab and Haryana High Court Rules Animal Rights Outweigh Private Settlement*, ANIMAL LEGAL DEF. FUND 1, 1 (Apr. 1, 2024), <https://aldf.org/article/indias-punjab-and-haryana-high-court-rules-animal-rights-outweigh-private-settlement/> [<https://perma.cc/BGK6-4EHW>].

23. *Id.* at 3.

constitutional court, in a groundbreaking decision, recognized that animals are subjects of rights under the Peruvian Constitution. Second, the Brazilian courts upheld a fine of approximately 1.758 billion BRL (approximately USD 300,000) on Minerva, the country's largest exporter of live cattle, for the severe mistreatment to and cruelty of thousands of cattle during transport, which arguably influenced Minerva's announcement that it will end the transport of live animals by sea by 2025. And third, the Brazilian courts held that the principle of immateriality, a criminal defense, does not apply to the neglectful death of a dog who had a right to physical integrity.

II. Artificial Intelligence: An Emerging Topic in Animal Law

A. INTRODUCTION

In 2024, AI capabilities and uses that may impact animals gained attention within the animal law subdiscipline. AI developments have already impacted farmed animals, wildlife, and animals used for research, with science and technology outpacing the law.²⁴ International laws governing the application or impact of AI on animals are lacking as international AI regulation is in its infancy.²⁵ The EU leads the way with the EU Artificial Intelligence Act.²⁶ Enacted in 2024, the EU AI Act requires transparency in the use of private data to guard against discriminatory practices and ensure environmentally friendly AI systems.²⁷ It assigns risk levels to AI technology and requires new disclosures with deadlines ranging from six to thirty-six months following enactment.²⁸ The disclosure requirements focus on AI's impact on humans but do not consider animal interests.²⁹

Currently in the United States, there is no comprehensive AI regulation and reporting framework.³⁰ Since 2020, numerous U.S. government actions have acknowledged the need for an AI regulatory framework. Such actions include many 2023 and 2024 Congressional hearings with AI experts to better understand the technology's potential benefits and harms; the 2022 Blueprint for an AI Bill of Rights³¹ guidance document issued by the Biden administration, which provides a framework but is not legally binding; the 2020 National Artificial Intelligence Initiative Act,³² creating an advisory task force to promote research and development;

24. Lev Bromberg et al., *Animals in the Machine: Why the Law Needs to Protect Animals From AI*, CONVERSATION 1, 2–3 (Sept. 30, 2024), <https://theconversation.com/animals-in-the-machine-why-the-law-needs-to-protect-animals-from-ai-234176> [<https://perma.cc/7BA5-USMA>].

25. See *id.* at 4.

26. Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 on Laying down harmonised rules on artificial intelligence and amending Regulations, 2024 O.J. (L 169) 1.

27. See *id.* annex XII, at 186.

28. See *id.* art. 112(11).

29. See *id.* § 136.

30. Scott J. Mulligan, *There Are More Than 120 AI Bills in Congress Right Now*, MIT TECH. REV., Sept. 2024, at 1, 1.

31. Exec. Order No. 14,110, 88 Fed. Reg. 210 (Oct. 30, 2023).

32. H.R. 6216, 116th Cong. (2020).

and the 2020 AI in Government Act³³ to facilitate AI technology use within federal agencies. The exclusion of animal interests in the development of AI tools and legislation is problematic, allowing for the entrenchment of anti-animal bias within AI models.³⁴

Some U.S. states have enacted laws prohibiting assigning rights or duties to AI.³⁵ Without preemptive federal AI laws that establish a clear allocation of liability for AI tools, these state laws create a problematic patchwork for assigning responsibility in an AI product's value chain. This may seem like an issue to be solved in case-by-case tort litigation. But AI tool use sets the stage for problems and harms that humans and animals have not yet dealt with. For example, it is unclear whether AI technology could be treated as a legal person under U.S. law. U.S. Senators are drafting a bill that would address AI liability.³⁶

B. WILDLIFE

Multiple scientific projects are using AI to decode wild animal communications. Scientists at Search for Extraterrestrial Intelligence (Seti) had a "conversation" with a humpback whale off the coast of Alaska.³⁷ Researchers played a recorded humpback greeting call through an underwater speaker, prompting a whale named Twain to respond in what appeared to be a conversational exchange lasting twenty minutes.³⁸ Researchers are now focused on interpreting the whales' vocalizations.³⁹ Another group of scientists have utilized AI to analyze elephant vocalizations.⁴⁰ The analysis, using an AI tool, suggests that the animals may use and respond to individual rumbles.⁴¹ The findings, published in June 2024, suggest that elephants may have the ability to communicate directly with specific family members.⁴² This discovery, indicating a form of individualized communication, highlights the potential of AI to enhance human's knowledge of the complex social structures within animal species.

AI is advancing wildlife conservation by improving the tracking of endangered species, with groups including WildMe/Conservation X Labs leveraging AI's

33. H.R. 2575, 116th Cong. (2020).

34. Cf. *id.* (indicating that animals have been left out of AI legislation).

35. See *Artificial Intelligence 2024 Legislation*, NCSL (Sept. 9, 2024), <https://www.ncsl.org/technology-and-communication/artificial-intelligence-2024-legislation> [<https://perma.cc/6U2W-UWTK>].

36. Richard Blumenthal & Josh Hawley, *Bipartisan Framework for US AI Act*, BLUMENTHAL 1, 1 (Sept. 7, 2023), <https://www.blumenthal.senate.gov/imo/media/doc/09072023bipartisanai-framework.pdf> [<https://perma.cc/BQV7-8JXX>].

37. Katherine Latham, *The Scientists Learning to Speak Whale*, BBC 1, 2 (Apr. 10, 2024), <https://www.bbc.com/future/article/20240409-the-scientists-learning-to-speak-whale> [<https://perma.cc/Q2BA-BKT8>].

38. *Id.* at 2.

39. *Id.* at 3.

40. Michael A. Pardo et al., *African Elephants Address One Another with Individually Specific Name-like Calls*, 8 NATURE ECOLOGY & EVOLUTION 1353, 1356 (2024).

41. *Id.* at 1354.

42. *Id.* at 1362.

imaging capabilities to identify and monitor species, such as the Iberian lynx.⁴³ This facilitates streamlined information exchange among conservation organizations and stakeholders.⁴⁴ In another positive development, some captive wild animals used for entertainment and zoo exhibitions are being replaced with AI-powered robots that look like live animals and allow for human-robot animal interactions.⁴⁵ Such replacement provides higher educational value and eliminates captive wild animal welfare concerns.

C. FARMED ANIMALS

Automation of industrial agriculture processes using AI has both positive and negative impacts on farmed animal species. AI developments are changing the ways farmed animals are raised. For example, new imaging technology powered by AI has made it possible to determine the gender of chickens prior to hatching.⁴⁶ As a result, egg industry male chickens need not be born and macerated where this technology is used.⁴⁷ In the cattle industry, AI facial recognition technology can be used to identify individual cattle, replacing the need for ear tags.⁴⁸ Precision tracking of cattle can trace disease spread and ensure cattle were not illegally grazed (such as on deforested lands in Brazil).⁴⁹ Additionally, sensor technologies and AI algorithms are being used to monitor animal health and welfare.⁵⁰ Replacement of human workers with AI animal monitoring systems can eliminate worker frustrations that lead to animal mishandling and abuse, although using this technology could lead to further cognitive dissonance toward farmed animals used in food systems.⁵¹

D. ANIMALS USED IN RESEARCH

AI provides important benefits by reducing the need for research animals.⁵² AI can be used to search existing databases, eliminating unnecessary duplication of

43. *Wildbook for Lynx*, WILDME, <https://www.wildme.org/wildbook-for-lynx.html> [https://perma.cc/9AMT-9YJS] (last visited Nov. 10, 2024).

44. *See id.*

45. Stephen Johnson, *How Robots Could End Animal Captivity in Zoos and Marine Parks*, FREETHINK (July 24, 2021), <https://www.freethink.com/series/just-might-work/robotic-dolphins> [https://perma.cc/BN94-R7GA].

46. *Genus Focus: Contactless In-ovo Sexing Arrives in Norway*, VENCOMATIC GRP. (July 2, 2024), <https://www.vencomaticgroup.com/blog/genus-focus-first-in-ovo-sexing-solution-in-norway> [https://perma.cc/5NEQ-9TLU].

47. *See id.*

48. Olivia Sip, *AI Facial Recognition Technology for Cattle*, AG PROUD (May 21, 2024), <https://www.agproud.com/articles/59583-ai-facial-recognition-technology-for-cattle> [https://perma.cc/7CXC-P8QY].

49. *Id.*

50. Suresh Neethirajan, *Artificial Intelligence and Sensor Innovations: Enhancing Livestock Welfare with a Human-Centric Approach*, 4 HUMAN-CENTRIC INTEL. SYS. 1, 2 (2024).

51. *See id.* at 5.

52. Thomas Hartung, *Making Big Sense from Big Data in Toxicology by Read-Across*, 33 ALT. TO ANIMAL EXPERIMENTATION (ALTEX) 83, 85, 89 (2016).

past animal experiments.⁵³ Importantly, AI use can replace animals by modeling potential outcomes of an experiment, eliminating the need for animal use in many steps of a project and saving thousands of animal lives.⁵⁴ In the classroom, AI tools can simulate dissection to eliminate the killing of animals, such as in the United States, where twelve million animals are used annually.⁵⁵

E. CONCLUSION

New regulations are needed to govern the use of AI. Legislators must consider how AI will impact society's most vulnerable members, including animals. Meaningful collaboration among researchers, developers, policymakers, animal lawyers, advocates, and the public is essential to ensure that AI's use in agriculture, research, and conservation aligns with ethical principles and advances societal welfare by incorporating animal concerns.

III. Legislative Progress in Banning Octopus Farming: A Preemptive Strike Against Unsustainable Aquaculture

In 2024, Senators Sheldon Whitehouse and Lisa Murkowski introduced the OCTOPUS Act to the U.S. Senate to ban octopus farming,⁵⁶ marking a pioneering legislative effort to confront ethical and environmental issues surrounding this new aquaculture industry. As global seafood demand rises, industries explore farming methods for varied species, including octopuses.⁵⁷ But the unique biology and cognitive complexity of octopuses raise significant welfare concerns, making intensive farming practices ethically and environmentally unsustainable.⁵⁸ This section examines the ethical, environmental, and legislative dimensions of octopus farming, with a focus on the OCTOPUS Act as a pivotal development.

A. ETHICAL AND WELFARE CONCERNS

Octopuses are among the most intelligent invertebrates, exhibiting advanced cognitive abilities, including problem-solving, learning, and even displaying distinct

53. *Id.* at 89, 92.

54. Jack McGovan, *Animal Research: Reimagining Alternatives to Animal Testing*, JOHNS HOPKINS MAG. 4, 6 (2024), <https://hub.jhu.edu/magazine/2024/fall/alternatives-to-animal-testing-advances/> [https://perma.cc/ADC7-F29F].

55. *Waste and Cruelty of Dissection*, NAT'L. ANTI-VIVISECTION SOC'Y. (NAVS), <https://navs.org/key-issues/waste-and-cruelty-of-dissection/> [https://perma.cc/D86F-ZVYD] (last visited Nov. 10, 2024).

56. See generally *Opposing the Cultivation and Trade of Octopus Produced Through Unethical Strategies (OCTOPUS) Act of 2024*, S. 4810, 118th Cong. (2024).

57. Bonnie Waycott, *Octopus Aquaculture – Unethical or the Next Big Thing?*, GLOB. AQUACULTURE ADVOC. (July 29, 2019), <https://www.globalseafood.org/advocate/octopus-aquaculture-unethical-or-the-next-big-thing/> [https://perma.cc/YNU4-D2W8].

58. Press Release, Sheldon Whitehouse U.S. Sen. for R.I., Whitehouse, Murkowski Introduce Bipartisan Bill Banning Commercial Octopus Farming (July 25, 2024), <https://www.whitehouse.senate.gov/news/release/whitehouse-murkowski-introduce-bipartisan-bill-banning-commercial-octopus-farming/> [https://perma.cc/P82T-ALA8].

personalities.⁵⁹ These traits, while fascinating, make the confinement of octopuses in farming conditions particularly problematic. In the wild, octopuses are solitary animals, preferring to roam vast areas and engage in complex behaviors that are nearly impossible to replicate in captivity.⁶⁰ When confined in small spaces, they become stressed, aggressive, and exhibit signs of suffering.⁶¹ Additionally, there is currently no humane method for slaughtering octopuses, further complicating the ethics of farming them for food.⁶² Beyond physical space, octopuses require mental stimulation and have highly sensitive nervous systems, making them prone to chronic stress in confined environments.⁶³ High stocking densities, common in other aquaculture forms, exacerbate these issues, leading to cannibalism, injury, and high mortality rates.⁶⁴

B. ENVIRONMENTAL AND SUSTAINABILITY ISSUES

Octopus farming also poses significant environmental risks.⁶⁵ Octopuses are carnivorous, needing large quantities of protein-rich feed, typically from wild-caught fish.⁶⁶ This dependency on fishmeal depletes wild fish stocks, undermining marine biodiversity and adding pressure to already overexploited ecosystems.⁶⁷ The ecological footprint of octopus farming mirrors that of other carnivorous species like salmon, where the input of wild-caught prey far outweighs the yield in edible biomass, making the practice unsustainable.⁶⁸ Waste produced by octopus farms, including uneaten feed, fecal matter, and chemicals used in the farming process, can pollute surrounding waters.⁶⁹ This waste leads to nutrient loading, harmful algal blooms, and oxygen depletion, devastating local ecosystems.⁷⁰ These environmental consequences highlight the need for sustainable seafood production approaches that do not rely on intensive farming of carnivorous species.⁷¹

59. Madison Longenecker, *The Incredible Intelligence of Octopuses*, COMPASSION IN WORLD FARMING (Aug. 23, 2024), <https://www.ciwf.com/media-and-news/blog/2024/08/the-incredible-intelligence-of-octopuses> [<https://perma.cc/KCV2-BU78>].

60. *Id.*

61. *Id.*

62. AQUATIC LIFE INST., WHAT LIES BEHIND MEXICO'S OCTOPUS FARM RESEARCH FACADE? 2 (2024), <https://www.ali.fish/blog/what-lies-behind-mexicos-octopus-farm-research-facade-8scaew> [<https://perma.cc/RBX9-SJPH>].

63. See Jonathan Birch, et. al., *Review of the Evidence of Sentience in Cephalopod Molluscs and Decapod Crustaceans*, LOND. SCH. OF ECON. & POL. SCI. 61 (2021), https://www.wellbeingintlstudiesrepository.org/cgi/viewcontent.cgi?article=1001&context=af_gen [<https://perma.cc/LWX7-S3L9>].

64. See *id.*

65. AQUATIC LIFE INST., WHY CEPHALOPOD FARMING MUST BE REJECTED BEFORE IT STARTS 1 (Feb. 2023), <https://perma.cc/QA3K-FZ53>.

66. *Id.* at 2.

67. See *id.*

68. See *id.* at 5.

69. Clara Dell, *What Fish Farming Really Means for the Environment, Animals and People*, SENTIENT (Nov. 8, 2023), <https://sentientmedia.org/fish-farming/> [<https://perma.cc/6RXH-6AU2>].

70. *Id.*

71. See AQUATIC LIFE INST., *supra* note 65, at 5.

C. LEGISLATIVE DEVELOPMENTS IN THE UNITED STATES

In 2024, in response to these ethical and environmental concerns, the OCTOPUS Act was introduced in the U.S. Senate to ban the commercial farming of octopuses.⁷² This legislation marks a significant shift in animal farming regulation, particularly for non-traditional farm species.⁷³ The bill emphasizes the sentience and complexity of octopuses, arguing that farming such intelligent animals for consumption is both inhumane and environmentally harmful.⁷⁴ Though still in the early stages of the legislative process, the federal bill represents growing recognition of the ethical implications of farming sentient animals.⁷⁵ If passed, it would make the United States the first country to ban octopus farming, potentially setting a global precedent.⁷⁶

D. GLOBAL CONTEXT AND COMPARISONS

The United States is not alone in facing the proposition of octopus farming. In Spain, plans for the world's first commercial octopus farm met fierce opposition from animal welfare groups and environmental activists.⁷⁷ The proposed farm, aimed at producing 3,000 tons of octopus annually, has been criticized for ignoring the animals' welfare and the environmental impact of large-scale operations.⁷⁸ The farm's opponents argue it overlooks octopuses' unique needs and risks causing significant ecological damage to surrounding marine environments.⁷⁹

In the EU, farmed animal welfare is regulated by a comprehensive legal framework, yet cephalopods like octopuses lack specific protections.⁸⁰ This gap has led to calls for the EU to extend animal welfare laws to include cephalopods.⁸¹ In fact, the UK recognizes cephalopods as sentient under the Animal Welfare (Sentience)

72. OCTOPUS Act of 2024, *supra* note 56, at § 3(1).

73. See Sheldon Whitehouse U.S. Sen. for R.I., Whitehouse, *supra* note 58.

74. *Id.*

75. *Id.*

76. *Id.*

77. *A Deep Dive into the Human Threats Facing Octopuses*, FREEDOM FOR ANIMALS, <https://www.freedomforanimals.org.uk/blog/world-octopus-day-2023> (last visited Apr. 2, 2025) [<https://perma.cc/FAE4-RB2M>].

78. See generally AQUATIC LIFE INST., NUEVA PESCANOVA- PRIORITIZING PROFITS AND POLLUTING LAS PALMAS - THE WORLD'S FIRST LARGE SCALE COMMERCIAL OCTOPUS FARM (June 7, 2023), https://drive.google.com/file/d/1LVZcGSbeZm8cU9zwz6w0bV_LyllfIZ7/view [<https://perma.cc/PK92-LG5U>].

79. See Jennifer Jacquet et al., *The Octopus Mind and the Argument Against Farming It: Commentary on Mather on Octopus Mind*, 19 ANIM. SENTIENCE 1, 1-2 (2019).

80. See AQUATIC LIFE INSTIT., COMMENTS ON THE ENVIRONMENTAL IMPACT OF NUEVA PESCANOVA BEFORE THE GOVERNMENT OF THE CANARY ISLANDS: GENERAL DIRECTORATE OF FISHERIES AND THE GENERAL DIRECTORATE FOR THE FIGHT AGAINST CLIMATE CHANGE AND THE ENVIRONMENT 1 (2022), https://futurefood4climate.eu/wp-content/uploads/2022/05/Octopus-Farm-EIA-Response-final_ENG.pdf [<https://perma.cc/ED8K-BYHM>].

81. Heather Browning et al., *The Sentience Shift in Animal Research*, NAT'L LIBR. OF MEDICINE (May 25, 2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9704368/> [<https://perma.cc/46PV-EYTX>].

Act of 2022.⁸² This recognition could pave the way for legislation banning octopus farming, especially given findings from a recent London School of Economics report concluding that high-welfare octopus farming is currently unattainable.⁸³ The report highlighted the absence of humane slaughter methods and the difficulty of replicating octopuses' natural environments, making octopus farming incompatible with the UK's animal welfare standards.⁸⁴

E. THE CASE FOR PREEMPTIVE LEGAL ACTION

Preemptive legal action, such as the OCTOPUS Act, provides a way to align animal welfare and environmental sustainability before harmful practices become ingrained in the global food system.⁸⁵ By opposing octopus farming now, lawmakers can set an example for other countries, encouraging the development of more humane and sustainable alternatives to intensive aquaculture.⁸⁶

IV. Policy Progress Leading to the End of the Fur Trade

In 2014, more than 140 million mink, foxes, and raccoon dogs were confined for their entire lives in wire cages on fur farms around the globe and killed by gas or electrocution solely for fur apparel and accessories; ten years later, that number has plummeted to roughly twenty million animals worldwide.⁸⁷ In the United States, the number of mink killed for the fur trade has dropped below one million for the first time since the U.S. Department of Agriculture started tracking it in the 1970s.⁸⁸

Greater consumer awareness, disapproval of animal cruelty associated with the fur trade, and a growing embrace of alternatives have certainly contributed to the fur industry's eighty-five percent decline.⁸⁹ That said, the policies being announced by leading fashion brands—and the laws being passed at the local and national

82. See *id.*

83. See Consolidated Version of the Treaty on the Functioning of the European Union art. 13, June 7, 2016, 2016 O.J. (C 204) 54; JONATHAN BIRCH ET AL., REVIEW OF THE EVIDENCE OF SENTIENCE IN CEPHALOPOD MOLLUSCS AND DECAPOD CRUSTACEANS 7 (2021), <https://www.lse.ac.uk/news/news-assets/pdfs/2021/sentience-in-cephalopod-molluscs-and-decapod-crustaceans-final-report-november-2021.pdf> [<https://perma.cc/LWX7-S3L9>].

84. Birch, *supra* note 83, at 75.

85. Longenecker, *supra* note 59.

86. See AQUATIC LIFE INST., *supra* note 65, at 1.

87. *No Business in Fur: Economic Decline in the Global Fur Trade*, HUMANE WORLD FOR ANIMALS 1, 1 (2023), <https://www.hsi.org/wp-content/uploads/2023/04/HSIUK-Fur-Economic-Decline.pdf> [<https://perma.cc/L5UJ-LMDV>].

88. Nat'l Agric. Stat. Serv. et al., *Pelt Production Down 28 Percent*, USDA (July 12, 2024), <https://usda.library.cornell.edu/concern/publications/2227mp65f> [<https://perma.cc/HR5E-FFR2>].

89. Kitty Block, *Here's How 2024 Brought Us Closer to Ending the Fur Trade for Good*, HUMANE WORLD FOR ANIMALS (Dec. 11, 2024), <https://www.humaneworld.org/en/blog/closer-to-ending-fur-trade> [<https://perma.cc/GH4A-HQDE>].

levels—are now the main drivers behind the fur trade’s fast fall from fashion relevancy.⁹⁰

The progress of 2024 has provided a glimpse at how a once-thriving trade will soon have little choice but to close its doors to make room for more innovative and humane alternatives.⁹¹ This year, for example, international fashion brands Marc Jacobs, Max Mara, and Alexander Wang became the latest companies to announce fur-free policies.⁹² Most well-known luxury fashion brands and retailers, including Gucci, Prada, Armani, Neiman Marcus, and many more had already announced similar policies,⁹³ stripping animal fur of its aspirational value and reinforcing its associations with unnecessary animal cruelty and environmental degradation.

That momentum in turn has led financial institutions like ING and the International Finance Corporation to safeguard their assets through a policy of no funding for the fur trade.⁹⁴ This year, Dutch-owned NN Group became the latest major financial institution to set such a policy.⁹⁵

Polling has consistently shown that most people are opposed to killing animals solely for their fur,⁹⁶ and with substantial support from the fashion and financial industries, laws addressing the production and sale of animal fur are finding favor in legislatures around the world.

In 2024, to create more humane marketplaces and end any association with the fur trade, Attleboro and Arlington, Massachusetts became the fifteenth and sixteenth U.S. municipalities to pass prohibitions on the sale of new fur products, including online sales.⁹⁷ In 2019, California, which represented nearly a quarter of

90. See *The Future of Fashion*, FUR FREE RETAILER, [https://furfreeretailer.com/\[https://perma.cc/6TNR-7VRY\]](https://furfreeretailer.com/[https://perma.cc/6TNR-7VRY]) (last visited Mar. 29, 2025).

91. See Block, *supra* note 89.

92. *Alexander Wang Brand Animal Welfare Practice*, ALEXANDER WANG (Jan. 1, 2025), <https://www.alexanderwang.com/us-en/customer-care/animal-welfare> [https://perma.cc/DJ5X-C7FD]; Luisa Zargani, *Max Mara Fashion Group Confirms It Is Fur-Free*, WOMEN’S WEAR DAILY (Aug. 6, 2024), <https://wwd.com/fashion-news/fashion-scoops/max-mara-fashion-group-confirms-fur-free-1236532360/> [https://perma.cc/42BK-4GLT]; PJ Smith, *Op-Ed: Fashion’s Fur Debate Has Never Been a Clean Fight*, BUS. OF FASHION (June 11, 2024), <https://www.businessoffashion.com/opinions/sustainability/lvmh-fur-marc-jacobs-activist-campaign-bully/> [https://perma.cc/XW5R-R7K2].

93. FUR FREE RETAILER, *supra* note 90.

94. See ING, ENVIRONMENTAL AND SOCIAL RISK FRAMEWORK 38 (June 2021), <https://www.ing.com/web/file?uuid=7b964e2e-59e8-4371-9964-8923f5121d5c&owner=b03bc0-17-e0db4b5d-abbf-003b12934429&contentid=51533> [https://perma.cc/M5EA-8VDQ]; see also IFC, IFC PRACTICES FOR SUSTAINABLE INVESTMENT IN PRIVATE SECTOR LIVESTOCK OPERATIONS 16 (Oct. 2022), <https://www.ifc.org/content/dam/ifc/doclink/2023/IFC-practices-for-sustainable-investment-in-private-sector-livestock-operations.pdf> [https://perma.cc/9VET-PRHS].

95. *Financial Institutions: Fur Exclusion Policies*, HUMANE SOC’Y INT’L 2 (Nov. 2024), <https://www.hsi.org/wp-content/uploads/2023/04/FFA-financial-Institutions-with-fur-exclusion-policies.pdf> [https://perma.cc/4HAE-S35R].

96. *Public Opinion*, FUR FREE ALL., <https://www.furfreealliance.com/public-opinion/> [https://perma.cc/NS8R-QCEZ] (last visited Apr. 7, 2024).

97. See ATTLEBORO, MASS., CITY ORD. § 11-23 (2024); ARLINGTON, MASS., BYLAWS tit. I, art. 24 (2024).

all the fur sold in the United States,⁹⁸ became the first state to do so after Los Angeles, San Francisco, Berkeley, and West Hollywood passed similar municipal-level measures.⁹⁹ At the federal level, in 2023, U.S. Representative Adriano Espaillat introduced H.R. 3783, the Mink Virus Act, to prohibit mink fur farming across the country.¹⁰⁰

Israel was the first country to prohibit fur product sales in 2021, and today, a global trend is underway.¹⁰¹ Just this year, Romania became the twenty-second country in Europe and the sixteenth EU member state to prohibit fur farming because of welfare concerns.¹⁰²

The public health and future pandemic risks associated with fur farming are increasingly featured in policy debate.¹⁰³ Scientists voiced concerns when the COVID-19 virus began infecting mink on fur farms, and those concerns have heightened as more fur-farmed animals have become infected with Highly Pathogenic Avian Influenza A (H5N1).¹⁰⁴ A 2024 paper published in *Nature* found animals from fur farms in China, the largest producer of animal fur, harbored viruses with zoonotic spillover potential.¹⁰⁵ In the case of COVID-19, fur-farmed mink were able to spread mutated forms of the virus back to humans.¹⁰⁶

Romania's 2024 ban on fur production is especially significant because the EU is in the process of responding to a European Citizens Initiative (ECI), which gathered more than 1.5 million signatures in less than a year.¹⁰⁷ The ECI asks for a complete prohibition on fur production and the trade of fur products within the EU.¹⁰⁸ As a first step, the European Food and Safety Authority (EFSA) spent this year assessing whether fur farms meet the welfare needs for undomesticated animals, like foxes, mink and raccoon dogs.¹⁰⁹ The EFSA will release its report

98. U.S. CENSUS BUREAU, *All Sectors: Industry by Products for the U.S. and States: 2017*, <https://data.census.gov/table/ECNNAPCSIND2017> [<https://perma.cc/DH4W-87AB>] (last visited Apr. 6, 2025).

99. CAL. FISH & GAME CODE § 2023 (2019).

100. H.R. 3783, 118th Cong. (2023).

101. Joe Hernandez, *Israel Has Become The 1st Country to Ban the Sale of Most Fur Clothing*, NPR (June 14, 2021), <https://www.npr.org/2021/06/14/1006279660/israel-has-become-the-first-country-to-ban-the-sale-of-fur-clothing> [<https://perma.cc/GD24-64T7>].

102. *Victory: Romania Bans Fur Farming!*, HUMANE SOC'Y INT'L EUR. (Oct. 22, 2024), <https://www.hsi.org/news-resources/victory-romania-bans-fur-farming/> [<https://perma.cc/7D7L-W9EY>].

103. See *id.*

104. Thomas P. Peacock & Wendy S. Barclay, *Mink Farming Poses Risks for Future Viral Pandemics*, PNAS (July 19, 2023), <https://www.pnas.org/doi/10.1073/pnas.2303408120> [<https://perma.cc/2K9L-LAKM>].

105. Jin Zhao et al., *Farmed Fur Animals Harbour Viruses with Zoonotic Spillover Potential*, 634 NATURE 228 (2024).

106. *Id.*

107. *Fur Free Europe*, EUR. UNION, <https://citizens-initiative.europa.eu/fur-free-europe> [<https://perma.cc/7MLZ-67XU>] (last visited Nov. 7, 2024).

108. See *id.*

109. *Questions and Answers on the European Citizens' Initiative "Fur Free Europe"*, EUROPA (Dec. 6, 2023), https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_6254 [<https://perma.cc/VY26-3E4R>].

sometime in 2025 with a decision on potential legislation by the European Commission set for 2026.¹¹⁰

Outside the EU, both Switzerland and the UK are taking additional steps to distance themselves from the global fur trade.¹¹¹ In the UK Parliament, a 2024 bill was introduced that would end the import and sale of new animal fur from all species,¹¹² and Switzerland is considering a fur import ban of its own.¹¹³

The weight of the moral argument against fur is enormous.¹¹⁴ Fewer and fewer institutions, governments, commercial concerns, or consumers are willing to support an industry founded on unnecessary animal suffering and death and public health risk.¹¹⁵ The battle has nearly been won in the marketplace, and in the next few years the likelihood is that more and more legislatures will codify prohibitions seen elsewhere, where similar prohibitions were enacted in less than a decade.¹¹⁶ Producers and consumers will opt for humanely produced garments and accessories, and the collective memory of fur fashion and all that it requires of animals will fade into history.¹¹⁷

V. A Peruvian Constitutional Court Recognizes Rights for Animals – *Run the Fox Case*

A constitutional court in Peru issued a judgment in the *Run the Fox* case,¹¹⁸ recognizing for the first time in Peru that animals are subjects of rights derived from the Peruvian Constitution.

A. BACKGROUND

“Run Run,” an Andean fox (*Lycalopex culpaeus*), was extracted from his natural habitat and sold as a domestic dog in a market in Lima.¹¹⁹ Although Run had an owner, he adapted to a stray dog lifestyle, as shown in several videos on the

110. *Id.*

111. See *Bill to Ban UK Fur Imports and Sales to be Introduced to Parliament*, HUMANE WORLD (Oct. 15, 2024), <https://www.hsi.org/news-resources/bill-to-ban-uk-fur-imports-and-sales-to-be-introduced-to-parliament/> [https://perma.cc/58WD-PJGY].

112. *Id.*

113. *Consumer Protection Welcomes Ban on Imported Fur*, SWISSINFO.CH (July 16, 2024), <https://www.swissinfo.ch/eng/swiss-politics/consumer-protection-welcomes-ban-on-imported-fur/83963013> [https://perma.cc/JVP9-4922].

114. See *id.*

115. See *id.*

116. See *id.*

117. See *id.*

118. Marcia Condoy Truyenque, *Run Run the Fox and Animals as Rights Holders in Peru*, HELSINKI ANIMAL L. BLOG (Oct. 10, 2024), <https://blogs.helsinki.fi/animallawblogseries/2024/10/10/run-run-the-fox-and-animals-as-rights-holders-in-peru/> [https://perma.cc/Q4FH-UBU4].

119. *Id.*

internet.¹²⁰ On November 8, 2021, the Peruvian National Wildlife Service (SERFOR) captured Run and transferred him to Zoológico Parque de las Leyendas (the Zoo) where he received veterinary treatment and was exhibited to the public.¹²¹

On November 17, 2021, IPANEMA, an environmental NGO, filed a constitutional writ of amparo requesting that the judge order SERFOR to transfer Run from the Zoo to a wildlife rescue center for subsequent reintegration into his natural habitat.¹²² The Third Court Specialized in Constitutional Law of Lima (the Court) admitted the writ of amparo and issued the judgment on June 28, 2024.¹²³

B. ON THE RIGHTS OF RUN RUN THE FOX

As explained in “Run Run the Fox and Animals as Rights Holders in Peru,”¹²⁴ the *Run Run* judgment is based on the constitutional duty to protect animals, an implicit constitutional duty that has both an ecocentric and a sentiocentric dimension.¹²⁵ According to the case law of the Peruvian Constitutional Tribunal, the right to a healthy environment,¹²⁶ alongside the state obligation to promote the sustainable use of natural resources¹²⁷ and the conservation of biological diversity,¹²⁸ gives rise to a constitutional duty to protect animals. This protection is owed to animals not merely as elements of the environment but also as sentient beings who must be protected from cruelty and unnecessary suffering.¹²⁹ Advancing these arguments, the *Run Run* judgment states that animals, as legally recognized sentient beings, possess a dignity and intrinsic value¹³⁰ that justifies a “reinforced” protection of their rights.¹³¹

120. See *El Zorrito de Comas: Run Run es Captado Jugando con un Perrito y Luego Escapa*, CORREO (Nov. 8, 2021), <https://diariocorreo.pe/videos/actualidad/el-zorrito-de-comas-run-run-es-captado-jugando-con-un-perrito-y-luego-escapa-video-noticia/> [https://perma.cc/PD2C-8LBK]; *Zorro ‘Run Run’ Fue Encontrado Durmiendo en Techo de Casa, Pero Vecinos no Pudieron Atraparlo*, LA REPÚBLICA (Nov. 6, 2021), <https://larepublica.pe/videos/sociedad/2021/11/06/comas-zorro-run-run-fue-encontrado-durmiendo-en-techo-de-casa-pero-no-pudo-ser-atrapado-por-vecinos-serfor> [https://perma.cc/TM6E-DBCX]; *Zorrito Run Run: ¿Cuál es el Plan Estratégico de Serfor para Capturarlo?*, INFOBAE (Nov. 8, 2021), <https://www.infobae.com/america/peru/2021/11/08/zorrito-run-run-de-comas-cual-es-el-plan-estrategico-de-serfor-para-capturarlo/> [https://perma.cc/EG8U-3376].

121. Truyenque, *supra* note 118.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. Constitución Política del Perú [Constitution] Dec. 31, 1993, art. 2.22.

127. *Id.* art. 67.

128. *Id.* art. 68.

129. Tribunal Constitucional del Perú [Constitutional Court of Peru], Apr. 13, 2005, Judgment in the File No. 42-2004-AI/TC; Tribunal Constitucional del Perú [Constitutional Court of Peru] July 11, 2019, Judgment in the File No. 7392-2013-PHC/TC.

130. Tercer Juzgado Especializado en Derecho Constitucional de Lima [Third Court Specialized in Constitutional Law of Lima], June 28, 2024, Judgment in File No. 4921-2021-0-1801-JR-DC-03, at 22.

131. *Id.*

The Court found that SERFOR failed to comply with its statutory obligations in various ways.¹³² First, the Court considered that the trafficking of Run Run fell within the scope of responsibility of SERFOR.¹³³ The lack of adequate prevention and supervision by SERFOR had led to Run Run being extracted from his natural habitat and then sold as a domestic dog in a public market.¹³⁴ Here, the Court reflected on how wildlife trafficking not only affects wildlife conservation but also the rights of animals to health and life.¹³⁵

Second, once Run Run was rescued, SERFOR did not establish any measure aimed at the reintroduction of Run Run to his natural habitat.¹³⁶ On the contrary, SERFOR limited his actions by transferring Run Run to a zoo.¹³⁷ For the Court, SERFOR did not fulfill its statutory obligation under Supreme Decree 007-2021-MIDAGRI, according to which live wild animals seized or rescued by SERFOR must be rehabilitated and released.¹³⁸ It is only when the animal does not qualify for release that the environmental authority may deliver them to captive breeding centers or zoos.¹³⁹

The Court considered further that by failing to comply with its statutory obligations, SERFOR breached the constitutional duty to protect animals.¹⁴⁰ For the Court, the transfer of Run Run to the Zoo, and his consequent captivity, caused him unnecessary suffering.¹⁴¹ The Court emphasized that “the ultimate goal of the public administration must be to return wild animals to their natural environment and not to [maintain animals] in captivity, whether for educational, scientific, or other purposes.”¹⁴²

C. OPERATIVE PART OF THE JUDGMENT

First, the Court ordered SERFOR to create a protocol for the appropriate treatment of animals rescued from wildlife trafficking that must protect the rights of animals.¹⁴³ Such protocol should cover the following stages: rescue, immediate captivity after rescue for veterinary treatment, rehabilitation, reintroduction into their natural habitat, and subsequent monitoring of the animal.¹⁴⁴ Second, SERFOR must re-evaluate Run Run’s current status in order to consider the feasibility of his reintroduction into his natural habitat or another similar habitat that would allow

132. Truyenque, *supra* note 118.

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. Truyenque, *supra* note 118.

139. *Id.*

140. *Id.*

141. Third Court Specialized in Constitutional Law of Lima, *supra* note 130, at 29.

142. Truyenque, *supra* note 118.

143. *Id.*

144. *Id.*

his free development.¹⁴⁵ The judgment concludes with a general call upon the state and judicial authorities to take a new direction in the way of viewing animals, by considering them as ends in themselves, as subjects of law that deserve effective protection by constitutional justice.¹⁴⁶

VI. Brazilian Court Upholds Historic Fine Against the Country's Largest Exporter of Live Animals by Sea

Live animals exported by sea face intense suffering even before they set foot on ships, as illustrated by a recent court precedent in Brazil, which upheld a fine against Minerva S.A. of approximately 1.758 billion BRL (approximately USD 300,000) for mistreatment and cruelty against 1,080 cattle during the animals' land transport to the Port of Santos where they were shipped for export.¹⁴⁷

Minerva S.A., Brazil's largest exporter of live cattle, filed suit against the Public Treasury of the Municipality of Santos, requesting that the fine be declared null and void.¹⁴⁸ The trial court, the Court of Appeals, the Superior Court of Justice, and the Supreme Federal Court of Brazil all decided in favor of the municipality.¹⁴⁹

Despite advances in animal protection legislation, positive Supreme Court precedents, and the rich academic scholarship on animal protection in Brazil, animal law is still an incipient area of knowledge, especially regarding animal exploitation by the food industry. Thus, this precedent in the courts—which allowed enforcement of the fine levied against Minerva to proceed and ensured the administrative liability of the company for mistreatment and cruelty against cattle exploited for consumption—represents an important victory for animal law in the country.

Notably, the fine was imposed based on a report from the local Environment Secretariat recognizing that all animals, whether domestic or destined for slaughter, deserve to be treated with full dignity.¹⁵⁰ As the lower court noted, the report contains photographs and a description of the incident.¹⁵¹ The long journey left the animals exhausted and dehydrated, and the space inside the trucks was unsanitary and insufficient to accommodate all the cattle.¹⁵² Evidence showed there was a large amount of waste and little ventilation, and some of the vehicles had no openings at all.¹⁵³

The fine was imposed pursuant to article 300 of Santos Municipal Law No. 3,531/68, which states:

145. *Id.*

146. *Id.*

147. 3ª Vara da Fazenda Pública [3rd Public Treasury Court], Aug. 14, 2024, No. 1009341-98.2020.8.26.0562 (Braz.), <https://esaj.tjsp.jus.br/cpopg/show> [<https://perma.cc/62EN-WPHJ>].

148. *Id.* at 37.

149. *Id.* at 411-14, 464-72, 581-83, 598-600, 620-24, 643-46, 654-58.

150. 3rd Public Treasury Court, *supra* note 147, at 77-90.

151. *Id.* at 413.

152. *Id.* at 413.

153. *Id.* at 411-14.

It is prohibited for any person to mistreat animals or commit acts of cruelty against animals, such as the following:

XI. Crowding animals in places with insufficient space or without water, air, light and food;

XV. Perform any and all acts, even those not specified in this Code, that cause violence and suffering to the animal.¹⁵⁴

The trial court judge reinforced that the amount was compatible with the principles of proportionality and reasonableness, especially considering the extent of the violation — in involving more than 1,000 animals.¹⁵⁵

Minerva appealed, claiming that, as an exporter, it was not responsible for the land transportation of the animals.¹⁵⁶ But the Court of Appeals held that the company, as sender and rancher, had the duty to ensure the adequate accommodation of the cows, and the poor conditions employed resulted in mistreatment.¹⁵⁷ Furthermore, the court stated that the amount of the fine was in line with the sanctioning nature of the penalty insofar as such fines are designed to prevent companies like Minerva from repeating illegal conduct so as to preserve a healthy environment.¹⁵⁸ The exporter appealed again, filing two appeals, both of which were unsuccessful based on procedural grounds.¹⁵⁹

In August 2024, the case became final and binding.¹⁶⁰ In the same month, Minerva announced that it would discontinue the export of live animals by sea by the end of the year.¹⁶¹ Although the company did not mention the fine in its announcement, it is possible that the fine served its purpose—to prevent behaviors that are harmful to animals from being repeated.¹⁶²

VII. Brazilian Court Finds that the Death of Dog Was Not “Immaterial”

In Brazilian criminal law, the principle of immateriality is a defense under which the accused must prove that the criminal conduct did not cause substantial harm

154. Santos Municipal Law No. 3,531/68, art. 300 (Braz.).

155. See Tribunal de Justiça de São Paulo [TJSP] [Court of Justice of São Paulo], No. 1009341-98.2020.8.26.0562, D.O.E.S.P. 1, 7 (Braz.), <https://esaj.tjsp.jus.br/cjsj/getArquivo.do?cdAcor dao=14777625&cdForo=0> [<https://perma.cc/J4AY-RN4S>].

156. *Id.* at 2–3.

157. *Id.* at 5.

158. *Id.* at 7.

159. See *id.* at 6.

160. See generally *id.* (decision became final on Aug. 14, 2024).

161. Nayara Figueiredo, *Minerva Vai Descontinuar Negócio de Exportação de Gado Vivo* [Minerva Will Discontinue Live Cattle Export Business], GLOBO, <https://globorural.globo.com/pecuaria/boi/noticia/2024/08/minerva-vai-descontinuar-negcio-de-exportao-de-gado-vivo.ghtml> [<https://perma.cc/A3Q2-RKBA>] (last visited Mar. 26, 2025).

162. See *id.*

to the interest that the law was designed to protect.¹⁶³ This *de minimis* defense allows for technically criminal behaviors to be decriminalized when they have not caused significant damage.¹⁶⁴ Because there is no statutory definition of the principle of immateriality, case law plays a fundamental role in developing criteria for its recognition and application.¹⁶⁵

An April 2024 decision by the Court of Appeals of the State of Santa Catarina considered whether the principle of immateriality could be applied as a defense when animal neglect results in death.¹⁶⁶ After a neighbor smelled a strong odor, a deceased dog was found in the defendant's apartment.¹⁶⁷ The dog—who had reduced mobility—was covered in waste and had died of dehydration and starvation.¹⁶⁸ While water and food were available, the dog apparently could not reach them.¹⁶⁹ The Public Prosecutor's Office of the State of Santa Catarina filed a criminal complaint in March 2020.¹⁷⁰

For the crime of animal mistreatment, the lower court sentenced the defendant to three months and fifteen days in open conditions in prison (similar to probation)¹⁷¹ and imposed a fine, including an aggravating penalty that is available if the animal dies from the mistreatment.¹⁷² The defendant appealed, arguing that the dog had died of natural causes and asserting the principle of immateriality as a defense.¹⁷³ The Court of Appeals found that there was enough evidence to convict the defendant for animal neglect and that the principle of immateriality did not apply, explaining:

163. PIERPAOLO BOTTINI ET AL., O PRINCÍPIO DA INSIGNIFICÂNCIA NOS CRIMES CONTRA O PATRIMÔNIO E CONTRA A ORDEM ECONÔMICA: ANÁLISE DAS DECISÕES DO SUPREMO TRIBUNAL FEDERAL [THE PRINCIPLE OF INSIGNIFICANCE IN CRIMES AGAINST PROPERTY AND THE ECONOMIC ORDER: ANALYSIS OF THE DECISIONS OF THE FEDERAL SUPREME COURT], FACULDADE DE DIREITO DA USP [USP SCHOOL OF LAW] 2 (2011), <https://vladimiraras.blog/wp-content/uploads/2011/08/pesquisa-sobre-o-princc3adpio-da-insignificc3a2ncia.pdf> [<https://perma.cc/DSC4-NJRX>].

164. *Id.*

165. See *Principle of Insignificance Does Not Apply in Case of Mistreatment with Animal Death*, JUD. POWER OF SANTA CATARINA (June. 17, 2024), <https://www.tjsc.jus.br/web/imprensa/-/nao-cabe-o-principio-da-insignificancia-em-caso-de-maus-tratos-de-animal-com-obito> [<https://perma.cc/9FZN-2NL8>].

166. *Justice of SC Condemns Tutor Who Traveled and Let Dog Die Locked in Apartment*, JUD. POWER OF SANTA CATARINA (Jun. 10, 2024), <https://www.tjsc.jus.br/web/imprensa/-/justica-de-sc-condena-tutora-que-viajou-e-deixou-caio-morrer-trancado-em-apartamento> [<https://perma.cc/GK6U-4TYX>].

167. *Id.*

168. *Id.*

169. See *id.*

170. *Id.*

171. *Id.*

172. In September 2020, the penalty for the crime of mistreatment of animals was increased from two to five years, and the option of imposing a ban on future custody of animals was added. But since this complaint was filed in March 2020, the new law was not applied. Lei No. 9.605, de 12 de fevereiro de 1998, Col. Leis Rep. Fed. Brasil, art. 32(2) (Braz.).

173. See JUD. POWER OF SANTA CATARINA, *supra* note 165.

The case law of the Supreme Federal Court requires the concomitant occurrence of the following elements for the application of the principle of immateriality: (1) minimal offensiveness of the agent's conduct; (2) total absence of social dangerousness of the action; (3) minimal degree of reprehensibility of the behavior; and (4) insignificance of the legal harm caused.¹⁷⁴

The present case cannot be considered of minimal importance, since it involved a domestic dog subjected to mistreatment, directly violating the legal right protected by the incriminating . . . [law], which is the physical integrity of animals. The present conduct goes even further, insofar as the animal died as a result of the appellant's actions.¹⁷⁵

The Court of Appeals thus recognized that the criminal conduct violated a legal right that is relevant to society, affirming the legal significance of Brazil's right to physical integrity of non-human animals.¹⁷⁶

174. Gustavo Pereira Santos Neto & Solange Barreto Chaves, *Criminal Records: The (Un)Need to Analyze the Person When Applying the Principle of Insignificance*, 2 RCMOS – MULTIDISC. SCI. J. O. SABER 232, 237 (2022), <https://submissoesrevistacientificaosaber.com/index.php/rcmos/article/download/245/772/1363> [<https://perma.cc/B4UD-34GJ>].

175. See JUD. POWER OF SANTA CATARINA, *supra* note 165 (emphasis added).

176. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

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National Security Law

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This Article summarizes selected international legal developments in 2024 in National Security Law.

I. New Final Rule Relating to Outbound Investment Issued to Bolster U.S. National Security

On November 15, 2024, the U.S. Department of Treasury (Treasury) published a final rule to establish an outbound investment security program that is intended to protect U.S. national security (the Final Rule).¹ As discussed below, the Final Rule, which will be administered by the newly created Office of Global Transactions in the Treasury's Office of Investment Security and entered into effect on January 2, 2025,² is intended to address the advancement by China and other countries of concern in sensitive technologies critical for military, intelligence, surveillance, or cyber-enabled capabilities by prohibiting certain transactions and mandating notifications for others.³

A. GENESIS OF THE FINAL RULE

On August 9, 2023, President Biden issued Executive Order 14105 on "Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern" (the EO).⁴ Among other things, the EO declared a national emergency to address the threat of advancement in military, intelligence, surveillance, and cyber-enabled technologies and products of China and other

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1. Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern, 89 Fed. Reg. 90398 (Nov. 15, 2024) (to be codified at 31 C.F.R. pt. 850).

2. Press Release, U.S. Dep't of the Treasury, Treasury Issues Regulations to Implement Executive Order Addressing U.S. Investments in Certain National Security Technologies and Products in Countries of Concern (Oct. 28, 2024), <https://home.treasury.gov/news/press-releases/jy2687> [<https://perma.cc/K3TA-HAB3>].

3. Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern, 89 Fed. Reg. at 90398.

4. Exec. Order No. 14105, 88 Fed. Reg. 54867 (Aug. 9, 2023).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

410 THE YEAR IN REVIEW

[VOL. 59]

countries of concern and sought to curb investments from the United States in those sectors and in those countries.⁵ The EO also directed the Treasury to begin a rulemaking process to designate specific types of investments by U.S. persons in China or in certain Chinese-affiliated entities as either prohibited or notifiable transactions.⁶

In accordance with and on the same day as the EO, the Treasury issued an Advance Notice of Proposed Rulemaking (ANPRM) regarding the forthcoming regulations.⁷ The ANPRM proposed several key definitions and invited public comment on over eighty specific issues relating to the implementation of the EO.⁸ The ANPRM did not itself implement the EO, and it was not intended to be draft regulatory text.⁹

Based on the comments received in response to the ANPRM, the Treasury published a Proposed Rule to implement the EO on July 5, 2024 (the Proposed Rule).¹⁰ A working group comprised of members from various committees of the ABA International Law Section (ABA ILS), including the Export Controls and Economic Sanctions Committee and the National Security Committee, prepared comments on the Proposed Rule that the ABA ILS submitted to the Treasury on July 30, 2024.¹¹

B. KEY PROVISIONS OF THE FINAL RULE

On November 15, 2024, the Treasury published the Final Rule.¹² Key provisions of the Final Rule are discussed below.

The Final Rule covers U.S. persons, which includes “any United States citizen or lawful permanent resident, as well as any entity organized under the laws of the United States or any jurisdiction within the United States, including any foreign branch of such an entity, and any person in the United States.”¹³ It also applies to

5. See *Id.*

6. Cori Lable et al., *U.S. Department of the Treasury Releases Final Rule Implementing Executive Order on Outbound Foreign Investments into China*, KIRKLAND & ELLIS (Feb. 21, 2025), <https://www.kirkland.com/publications/kirkland-alert/2025/02/us-department-of-the-treasury-releases-final-rule-implementing-executive-order-on-outbound-foreign> [<https://perma.cc/LEB7-7TW2>].

7. Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern, 88 Fed. Reg. 54961 (proposed Aug. 14, 2023).

8. See *id.*

9. See Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern, 89 Fed. Reg. 90398, 90399 (Nov. 15, 2024) (to be codified at 31 C.F.R. pt. 850).

10. Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern, 89 Fed. Reg. 55846 (proposed July 5, 2024) (to be codified at 31 C.F.R. pt. 850).

11. Am. Bar Ass’n Int’l Law Section, Comments to the U.S. Department of Treasury on Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern (July 30, 2024), <https://www.regulations.gov/comment/TREAS-DO-2024-0012-0008> [<https://perma.cc/T58J-P5N5>].

12. Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern, 89 Fed. Reg. at 90398.

13. *Id.* at 90399.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

NATIONAL SECURITY 411

transactions involving a covered foreign person, defined as “a *person of a country of concern* engaged in a *covered activity* related to defined subsets of technologies and products or a *person* that had a specified relationship with such a person.”¹⁴ A person of a country of concern includes “an individual who is a citizen or permanent resident of a *country of concern* . . . ; an entity organized under the laws of a *country of concern* . . . ; or an entity that is directly or indirectly owned 50 percent or more by [such persons].”¹⁵

Covered transactions include a U.S. person’s direct or indirect: acquisition of an equity interest or contingent equity interest in a covered foreign person; provision of debt financing convertible to an equity interest in a covered foreign person; conversion of a contingent equity interest or convertible debt in a covered foreign person, greenfield investment or certain corporate expansions that establish a covered foreign person or cause an existing person of a country of concern to engage in a covered activity; entrance into a joint venture with a person of a country of concern where the joint venture will undertake a covered activity; and investment as a limited partner (LP) into a non-U.S. person pooled investment fund that invests in a covered foreign person.¹⁶

Importantly, the Final Rule outlines several categories of transactions that are excepted from being considered covered transactions, including investments by a U.S. person in publicly traded securities; investments in securities issued by registered investment companies; investments below a certain size in pooled investment funds with binding assurances; full buyouts of interests in entities from countries of concern; intracompany transactions to support ongoing operations; fulfillment of binding, uncalled capital commitments; acquisition of voting interest upon default involving a loan; and certain transactions with persons from designated countries or territories.¹⁷

Covered transactions must be notified to the Treasury by a U.S. person through electronic filing, following instructions on the Treasury’s Outbound Investment Security Program website.¹⁸ The notification must include detailed information about the transaction, the U.S. person, the covered foreign person, and the relevant national security technologies and products.¹⁹ It must be filed no later than thirty calendar days after the completion of a notifiable transaction or after acquiring knowledge that the transaction would have been covered.²⁰ If submitted before completion, it must be updated within thirty days if there are material changes.²¹ Any material omission or inaccuracy discovered after submission must be promptly reported to the Treasury.²²

14. *Id.*

15. *Id.*

16. *Id.* at 90421–22.

17. *Id.* at 90447.

18. Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern, 89 C.F.R. at 90436.

19. *Id.* at 90437–38.

20. *Id.* at 90436.

21. *Id.*

22. *Id.* at 90435.

The knowledge standard set forth in the Final Rule requires that certain provisions apply only if a U.S. person knows of a relevant fact or circumstance, which includes actual knowledge, awareness of a high probability, or reason to know of a fact or circumstance's existence.²³ It involves conducting a "reasonable and diligent inquiry" to determine if a transaction involves a covered foreign person.²⁴ If a U.S. person acquires actual knowledge post-transaction that would have made it a covered transaction, they must notify the Treasury.²⁵ The standard is applied in various contexts, such as transactions involving covered foreign persons and the authority to direct transactions on behalf of non-U.S. entities.²⁶

The Final Rule's focus on "reasonable and diligent inquiry" to identify potentially covered transactions may reshape the mergers and acquisitions (M&A) market, particularly in deals involving Chinese companies or firms in relevant industries with operations in China.²⁷ Investors and lenders are likely to demand enhanced representations, covenants, and expanded diligence efforts.²⁸ The Treasury has emphasized that contractual provisions alone are insufficient to satisfy diligence requirements.²⁹ Instead, the Final Rule requires considering the totality of the facts and circumstances, including efforts to obtain information and contractual assurances that should be obtainable through a reasonable transactional due diligence process.³⁰ These heightened requirements may necessitate updates to existing M&A and financing practices as U.S. lenders face pressure to conduct deeper diligence to confidently execute on equity collateral or manage future restructurings.³¹

The Final Rule is expected to evolve over time.³² The Treasury has noted that notification requirements are intended to guide future changes, potentially adding new technologies of concern (e.g., biotechnology).³³ While near-term expansion is unlikely, given the substantial effort required to implement the current framework,

23. *Id.* at 90405.

24. See Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern, 89 C.F.R. at 90405.

25. *Id.*

26. *Id.*

27. Mark T. Ciani et al., *Foreign Investment and National Security: Navigating Heightened Scrutiny of US, EU and UK Cross-Border*, NAT'L L. REV. (Oct. 16, 2024), <https://natlawreview.com/article/foreign-investment-and-national-security-navigating-heightened-scrutiny-us-eu-and> [<https://perma.cc/TVS7-H56J>].

28. Li He et al., *Final Outbound Investment Rule Released*, DAVIS POLK: INSIGHTS (Nov. 4, 2024), <https://www.davispolk.com/insights/client-update/final-outbound-investment-rule-released> [<https://perma.cc/K8F6-7CAQ>].

29. *Id.*

30. See Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern, 89 C.F.R. at 90405.

31. Timothy J. Keeler et al., *US Department of the Treasury Issues Final Rule to Regulate Outbound Investments*, MAYER BROWN: INSIGHTS (Nov. 4, 2024), <https://www.mayerbrown.com/en/insights/publications/2024/11/us-department-of-the-treasury-issues-final-rule-to-regulate-outbound-investments> [<https://perma.cc/GLH4-LC5L>].

32. See Provisions Pertaining to U.S. Investments in Certain National Security Technologies and Products in Countries of Concern, 89 C.F.R. at 90426.

33. See He, *supra* note 28.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

NATIONAL SECURITY 413

further developments may occur in the medium-term as both the government and the private sector adapt.³⁴

C. CONCLUSION

The Final Rule represents a strategic effort to safeguard U.S. national security by controlling outbound investments in sensitive technology sectors. By imposing restrictions and notification requirements, it seeks to mitigate risks associated with technology transfers to countries of concern. Compliance with the Final Rule is essential for entities engaged in international technology transactions, ensuring alignment with national security objectives.

34. See *id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

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United Nations and International Organizations

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RENSHAW*

This article reviews international developments at the United Nations and its specialized agencies to advance progress on the Sustainable Development Goals (SDGs) in 2024, focusing on policy and legal developments related to artificial intelligence and nuclear energy. Notable highlights include the United Nations General Assembly's Pact for the Future and Global Digital Compact, the AI for Good initiative, the UN Climate Change Conference, and the International Atomic Energy Agency's Nuclear Energy Summit.

I. United Nations and Artificial Intelligence for Sustainable Development

This year marked the beginning of the International Decade of Sciences for Sustainable Development (2024–2033).¹ This decade presents an opportunity to explore how science can drive good governance and strengthen international legal and governance frameworks.² In 2024, significant progress was made at the United Nations, where world leaders recognized the importance of upholding and strengthening global governance and international law to ensure the responsible development and use of science, technology, and innovation, particularly in the field of artificial intelligence (AI).³ World leaders emphasized the need for inclusive international cooperation, governance frameworks, action plans, and investments to leverage the benefits of science and technology while mitigating risks and advancing sustainable development through digital technologies.⁴

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1. See generally G.A. Res. 77/326, Int'l Decade of Sci. for Sustainable Dev., 2024-2033 (Aug. 25, 2023).

2. See generally Call for initiatives: Int'l Decade of Sci. for Sustainable Dev. (2024-2033), UNESCO (Oct. 28, 2024) <https://www.unesco.org/en/articles/call-initiatives-international-decade-sciences-sustainable-development-2024-2033> [https://perma.cc/Y94A-3C6A].

3. See generally G.A. Res. 78/265, *Seizing the Opportunities of Safe, Secure and Trustworthy Artificial Intelligence Systems for Sustainable Dev.* (Apr. 1, 2024).

4. *Id.*

A. UNITED NATIONS GENERAL ASSEMBLY: THE PACT FOR THE FUTURE AND GLOBAL DIGITAL COMPACT

At the Summit of the Future in September 2024, the UN General Assembly adopted The Pact for the Future and its annexes, the Global Digital Compact and a Declaration on Future Generations.⁵ The Pact sets out action-oriented steps for sustainable development, financing for development, international cooperation on science and technological innovations, and modernization of global governance to strengthen multilateral institutions and the international financial architecture.⁶ The Pact for the Future addresses pressing global challenges, such as UN Security Council reform, nuclear non-proliferation, outer space governance, and the ethical development and use of emerging technologies.⁷ Notably, the Pact for the Future recognizes the application of international humanitarian law to new weapons technologies, such as autonomous weapons systems, and calls for urgent discussions and progress on developing an international agreement to address their potential development and use.⁸

The Global Digital Compact (the Compact), an annex to the Pact for the Future, promotes international cooperation to harness the transformative potential of digital technologies, including artificial intelligence, to address global challenges and accelerate achieving the Sustainable Development Goals (SDGs).⁹ The framework outlines a vision for a digital world that is inclusive, open, safe, secure, and sustainable, while upholding international law, including international human rights law.¹⁰ Recognizing the global impact of artificial intelligence, it emphasizes the vital importance of international, multistakeholder cooperation to ensure digital technologies, including artificial intelligence, and their uses are human-centric, responsible, transparent, and accountable.¹¹ It provides actions for enhancing artificial intelligence governance, interoperable data governance, and digital public goods and infrastructure.¹² The Compact highlights the need for agile and adaptable governance approaches that respect and advance existing international law, including the UN Charter and international human rights law, and the 2030 Agenda for Sustainable Development.¹³

The Compact also emphasizes the need for multistakeholder cooperation to establish robust governance policies, standards, and norms to ensure ethical data practices, data protection measures, privacy safeguards, data security, and cross-border data flows.¹⁴ To further advance this agenda, the Compact calls for a working

5. See generally G.A. Res. 79/1, The Pact for the Future (Sept. 22, 2024).

6. See generally *id.*

7. See *id.* ¶¶ 46–57, 67–69, 84.

8. See *id.* ¶ 48(b).

9. See *id.* at Annex I: Global Digital Compact ¶¶ 1–2.

10. See *id.* at Annex I: Global Digital Compact ¶¶ 7, 22–25.

11. See G.A. Res. 79/1, *supra* note 5, at Annex I: Global Digital Compact ¶¶ 8(i), 15, 19, 21.

12. See *id.* at Annex I: Global Digital Compact ¶¶ 14–17, 50–63.

13. See *id.* at Annex I: Global Digital Compact ¶¶ 5, 8, 14, 23, 31, 34, 39, 45(b), 50–55, 73.

14. See *id.* at Annex I: Global Digital Compact ¶¶ 5, 8(b, c), 17, 31, 32(b), 37–42, 58.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

UNITED NATIONS & INTERNATIONAL ORGANIZATIONS 417

group to develop recommendations for interoperable data governance.¹⁵ The working group will provide guidance to the UN General Assembly in 2026, helping to shape the future of data governance and digital cooperation.¹⁶ The UN General Assembly will then hold a high-level review of the Global Digital Compact in 2027 to assess progress, challenges, and emerging opportunities.¹⁷

B. UNITED NATIONS GENERAL ASSEMBLY RESOLUTIONS ON ARTIFICIAL INTELLIGENCE

The United Nations General Assembly adopted two stand-alone resolutions on artificial intelligence and sustainable development: Resolution 78/265 on establishing a global consensus approach to artificial intelligence governance, adopted in March 2024,¹⁸ and Resolution 78/311 on international cooperation on capacity building, adopted in July 2024.¹⁹

Resolution 78/265, a landmark resolution led by the United States and titled “Seizing the opportunities of safe, secure and trustworthy artificial intelligence systems for sustainable development,” is the first UN resolution emphasizing the need for global action and multilateral cooperation to align the development and use of artificial intelligence with safety and security safeguards and human rights protections on a global scale.²⁰ This resolution builds on existing international initiatives and frameworks, including those established by the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Organisation for Economic Co-operation and Development (OECD), the G7, the G20, the Artificial Intelligence Safety Summit at Bletchley Park, and the Global Partnership on Artificial Intelligence.²¹ The Resolution stresses the urgency of achieving global consensus on frameworks to ensure the safe, secure, trustworthy, privacy-preserving, and human-centric governance of artificial intelligence systems, their uses, and data.²² It emphasizes the need to bridge the digital divide by scaling up open artificial intelligence systems and enhancing digital infrastructure, particularly in developing countries.²³ The Resolution emphasizes responsible business conduct, aligning with the UN Guiding Principles on Business and Human Rights (UNGPs), which

15. See *id.* at Annex I: Global Digital Compact ¶ 48.

16. *Id.*

17. G.A. Res. 79/1, *supra* note 5, at Annex I: Global Digital Compact ¶ 74.

18. See generally G.A. Res. 78/265, *supra* note 3.

19. See generally G.A. Res. 78/311, *Enhancing Int’l Coop. On Capacity-Building of Artificial Intelligence* (July 1, 2024).

20. G.A. Res. 78/265, *supra* note 3; *The UN General Assembly Adopts U.S.-Led Resol. on Safe, Secure, and Trustworthy Artificial Intelligence*, 118 AM. J. OF INT’L L. 555, 555 (2024).

21. See Press Release, U.S. Dep’t of State, United Nations General Assembly Adopts by Consensus U.S.-Led Resol. on Seizing the Opportunities of Safe, Secure and Trustworthy Artificial Intelligence Systems for Sustainable Development (Mar. 21, 2024), <https://2021-2025.state.gov/united-nations-general-assembly-adopts-by-consensus-u-s-led-resolution-on-seizing-the-opportunities-of-safe-secure-and-trustworthy-artificial-intelligence-systems-for-sustainable-development/> [<https://perma.cc/6W9D-FMRC>].

22. G.A. Res. 78/265, *supra* note 3, ¶¶ 6, 6(a)-(b).

23. See *id.* ¶¶ 1, 4, 6(o), 10.

implement the UN's "Protect, Respect, and Remedy" framework.²⁴ These principles closely align with the approaches of environmental, social, and governance (ESG) standards and corporate social responsibility (CSR) practices.²⁵

Resolution 78/311, titled "Enhancing international cooperation on capacity-building of artificial intelligence," expanded on Resolution 78/265 by identifying practical actions for strengthening cooperative efforts and partnerships to address capacity building, knowledge sharing, technology transfers, workforce training, research and development, and equitable access.²⁶

C. INTERNATIONAL COOPERATION ON ARTIFICIAL INTELLIGENCE

As emphasized in the Pact for the Future, the Global Digital Compact, and UN General Assembly Resolutions 78/265 and 78/311, international cooperation is important for harnessing the benefits of artificial intelligence while mitigating risks.²⁷ Given the potential risks to peace, security, and human rights posed by artificial intelligence, particularly dual-use technologies, the United States and other Member States have emphasized the need for international cooperation on artificial intelligence governance within UN Security Council discussions, citing these UN General Assembly resolutions.²⁸

The Council of Europe's Framework Convention on Artificial Intelligence and Human Rights, Democracy, and the Rule of Law, which opened for signatures in September 2024, became the first multilateral treaty on artificial intelligence, setting a precedent for future UN discussions to prioritize human-centric governance that emphasizes human rights, accountability, and non-discrimination.²⁹

Multistakeholder platforms at the United Nations, such as the AI for Good initiative led by the International Telecommunication Union (ITU),³⁰ brought together governments, international organizations, the private sector, academia, and civil society to shape global artificial intelligence and data governance priorities.³¹

24. *Id.* ¶ 9.

25. See generally Rebecca DeWinter-Schmitt, *A Principles-Based Approach to the SDGs – Why It Matters for Bus.*, GLOB. COMPACT NETWORK GER. & GER. INST. FOR HUM. RTS.: DISCUSSION PAPER (2020), https://www.globalcompact.de/migrated_files/wAssets/docs/Nachhaltigkeits-CSR-Management/DGCN_DIMR_SDGs-and-human-rights_Discussion-paper_December-2020.pdf [<https://perma.cc/QGU9-CR2M>].

26. See G.A. Res. 78/311, *supra* note 19, ¶¶ 4-5.

27. See generally *id.*; see G.A. 79/1, *supra* note 5, ¶ 5; see generally G.A. 78/265, *supra* note 3.

28. See, e.g., U.N. SCOR, 79th Sess., 9753d mtg. at 1-2, 6, 10, 14, U.N. Doc. S/PV.9753 (Oct. 21, 2024).

29. See generally Council of Europe, Council of Europe Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of L., C.E.T.S. No. 225 (Sept. 5, 2024), <https://rm.coe.int/1680afae3c> [<https://perma.cc/3MR4-FHG3>]; Council of Europe opens first ever global treaty on AI for signature, COUNCIL OF EUR.: NEWSROOM (Sept. 5, 2024) <https://www.coe.int/en/web/portal/-/council-of-europe-opens-first-ever-global-treaty-on-ai-for-signature> [<https://perma.cc/WSY9-HQLE>].

30. See generally AI FOR GOOD, <https://aiforgood.itu.int/> [<https://perma.cc/26C8-G6SX>] (last visited Apr. 13, 2025).

31. See Alexandra Bustos Iliescu, *United Nations Initiatives on AI*, AI FOR GOOD (July 1, 2024), <https://aiforgood.itu.int/united-nations-initiatives-on-ai/> [<https://perma.cc/LT6X-YL2B>].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

UNITED NATIONS & INTERNATIONAL ORGANIZATIONS 419

Initiatives such as the governance day at the AI for Good Summit in May 2024³² and the inaugural International AI Standards Summit in October 2024³³ produced actionable recommendations, influencing standards and global action on using artificial intelligence to advance social good and sustainable development. Additionally, the UN High-Level Advisory Body on Artificial Intelligence, established to advise the UN Secretary-General,³⁴ provided recommendations to inform and guide the global agenda.³⁵ Also, the inaugural “Digitalization Day” at the UN Climate Change Conference (COP29) in November 2024 furthered broad multistakeholder commitment to responsibly use artificial intelligence and other digital technologies for climate action while protecting intellectual property and promoting open access.³⁶ More than 90 countries and over 1,000 stakeholders, including technology companies, nonprofits, and international and regional organizations, endorsed the related key initiatives and principles in the COP29 Declaration on Green Digital Action.³⁷

D. QUANTUM AND ARTIFICIAL INTELLIGENCE

The UN’s International Year of Quantum Science and Technology in 2025 highlights the transformative potential of quantum science and technologies to enhance sustainable development and address global challenges like climate change, energy, and food security.³⁸ But as quantum-powered artificial intelligence advances, it also raises concerns, such as the potential to break current encryption methods, pose cybersecurity risks, and affect global peace and security in “significant” ways, as experts told the UN Security Council in October 2024.³⁹ Inclusive international cooperation will be important for effective governance of quantum technologies and their applications, in accordance with international law, which will likely become central themes in future discussions on artificial intelligence governance.

32. See *AI Governance Day: From Principles To Implementation*, ITU: NEWS (May 30, 2024), <https://www.itu.int/hub/2024/05/ai-governance-day-from-principles-to-implementation/> [https://perma.cc/3EGF-QAM8].

33. See *International AI Standards Summit*, AI FOR GOOD: INT’L AI STANDARDS EXCH., <https://aiforgood.itu.int/ai-standards/> [https://perma.cc/U7ZL-P7VZ] (last visited Apr. 13, 2025).

34. *High-Level Advisory Body on Artificial Intelligence*, U. N.: OFFICE FOR DIGIT. AND EMERGING TECH. <https://www.un.org/digital-emerging-technologies/ai-advisory-body/> [https://perma.cc/G85B-P2S8] (last visited Apr. 13, 2025).

35. See generally *AI Advisory Body, Final Rep. on Governing AI for Humanity*, U.N. (2024).

36. *COP29 Presidency Hosts Inaugural Digitalisation Day*, COP29 BAKU AZERBAIJAN: NEWS (Nov. 16, 2024), <https://cop29.az/en/media-hub/news/cop29-presidency-hosts-inaugural-digitalisation-day> [https://perma.cc/Z4ZU-VR8F].

37. *Id.*

38. See generally G.A. Res. 78/287, *Int’l Year of Quantum Sci. and Tech.*, 2025 (June 7, 2024).

39. See U.N. SCOR, 79th Sess., 9753d mtg., *supra* note 28, at 3, 7, 10.

II. Nuclear Energy Summit 2024: Powering Progress for a Sustainable Future

On March 21, 2024, the inaugural Nuclear Energy Summit 2024 took place in Brussels.⁴⁰ Hosted by the International Atomic Energy Agency (IAEA) and Belgium, the Summit sought to build on the commitment to triple nuclear energy output by 2050 made by some countries at the UN Climate Change Conference (COP28) in December 2023.⁴¹ The IAEA launched the Declaration on Nuclear Energy, acknowledging the ability of nuclear energy to contribute to sustainable development and encouraging continued innovation in the nuclear industry.⁴² Additionally, several non-governmental organizations (NGOs) at the event signed the NGO Declaration on the Future of Nuclear Energy.⁴³ Key industry groups also applauded the results of the Summit and committed to partnering with governments to realize the full potential of nuclear technology.⁴⁴

A. RECENT DEVELOPMENTS IN THE SDGs AND NUCLEAR COOPERATION

The UN Sustainable Development Goals (SDGs) call for a global partnership between developed and developing countries.⁴⁵ The SDGs represent seventeen actionable goals, broken into smaller targets, to achieve “peace and prosperity for people and the planet.”⁴⁶ The advancement and implementation of nuclear energy directly advances two of these goals: SDG seven (affordable and clean energy) and SDG thirteen (climate action).⁴⁷ SGD seven seeks to “ensure access to affordable,

40. See Int’l Atomic Energy Agency [IAEA], *Nuclear Energy Summit 2024* (Mar. 21, 2024), <https://www.iaea.org/events/nuclear-energy-summit-2024> [<https://perma.cc/6EK5-FLBQ>].

41. See U.S. Dep’t of Energy, *At COP28, Countries Launch Declaration to Triple Nuclear Energy Capacity by 2050, Recognizing the Key Role of Nuclear Energy in Reaching Net Zero*, U.S. DEP’T ENERGY (Dec. 2, 2023), <https://www.energy.gov/articles/cop28-countries-launch-declaration-triple-nuclear-energy-capacity-2050-recognizing-key> [hereinafter *Declaration to Triple Nuclear Energy*] [<https://perma.cc/4UGR-XXEW>]; see also Alex Polonsky & Erin McClelland, *Nations Assemble for Revolutionary, First-Ever Nuclear Energy Summit*, Morgan Lewis: Blog Post (March 27, 2024), <https://www.morganlewis.com/blogs/upandatom/2024/03/nations-assemble-for-revolutionary-first-ever-nuclear-energy-summit> [<https://perma.cc/BW5D-UZPN>].

42. *Declaration on Nuclear Energy*, IAEA (Mar. 21, 2024), <https://nes2024.org/en/declaration/> [<https://perma.cc/7XX2-Y477>].

43. See Ad Hoc Coalition of 20 Non-Governmental Orgs., *NGO Declaration on the Future of Nuclear Energy*, NUCLEAR ENERGY SUMMIT 2024 (Mar. 21, 2024), <https://cdn.catf.us/wp-content/uploads/2024/03/20142722/ngo-declaration-future-nuclear-energy.pdf> [<https://perma.cc/7U8E-SLXG>].

44. See John Gorman et al., *Industry Statement*, NUCLEAR ENERGY SUMMIT 2024 (Mar. 21, 2024), <https://world-nuclear.org/images/articles/Industry-declaration-Nuclear-Energy-Summit-2024.pdf> [<https://perma.cc/FSP9-FY59>].

45. *The 17 Goals*, U.N. DEP’T ECON. & SOC. AFFAIRS: SUSTAINABLE DEV., <https://sdgs.un.org/goals> [<https://perma.cc/W8EK-ZK43>] (last visited Nov. 14, 2024).

46. *Id.*

47. See generally *id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

2025]

UNITED NATIONS & INTERNATIONAL ORGANIZATIONS 421

reliable, sustainable, and modern energy for all.”⁴⁸ SGD thirteen aims to “take urgent action to combat climate change and its impacts.”⁴⁹

Each year, the UN Secretary-General publishes an SDG Progress Report that evaluates global progress toward the SDGs’ targets.⁵⁰ The 2024 SDG Progress Report reveals that only seventeen percent of targets are on track; targets for both SDGs seven and thirteen are lagging.⁵¹

The 2024 SDG Progress Report demonstrates the significant hurdles that must be cleared to achieve SDGs seven and thirteen.⁵² To achieve universal access to reliable energy by 2030, electrification efforts must be expedited, investments in renewable energy must be boosted, energy efficiency must be further enhanced, and supportive policies and regulatory frameworks must be implemented.⁵³ The Report emphasizes that immediate measures must be taken to address the climate, limit the global temperature rise to 1.5 degrees Celsius, and achieve net zero carbon emissions by 2050.⁵⁴ The worldwide development and deployment of nuclear energy promises to address these concerns and make progress toward achieving SDGs seven and thirteen.⁵⁵

The Declaration to Triple Nuclear Energy recognizes the importance of energy resilience and nuclear energy’s potential role in ensuring access to affordable, reliable, and sustainable energy across the globe.⁵⁶ Endorsed by twenty-five countries at COP28 in December 2023, the Declaration to Triple Nuclear Energy commits countries to support nuclear energy development and innovation, invest in nuclear power, and cooperate to triple nuclear energy capacity from 2020 to 2050.⁵⁷ This agreement also set a solid foundation for the Summit in 2024.⁵⁸

B. OUTCOMES OF THE WORLD’S FIRST SUMMIT

Representatives from over thirty countries, various NGOs, and additional nuclear industry stakeholders attended the Summit.⁵⁹ The Summit, a first of its kind,

48. 7 *Ensure Access to Affordable, Reliable, Sustainable, and Modern Energy for All*, U.N. DEP’T ECON. & SOC. AFFAIRS: SUSTAINABLE DEV.: GOALS, <https://sdgs.un.org/goals/goal7> [<https://perma.cc/S2Q9-RSS5>] (last visited Nov. 14, 2024).

49. 13 *Take Urgent Action to Combat Climate Change and Its Impacts*, U.N. DEP’T ECON. & SOC. AFFAIRS: SUSTAINABLE DEV., <https://sdgs.un.org/goals/goal13> [<https://perma.cc/J68A-2WLP>] (last visited Nov. 14, 2024).

50. U.N. Secretary-General, *Progress Towards The Sustainable Development Goals*, 1, U.N. Doc. A/79/79-E/2024/54 (May 2, 2024).

51. *Id.* ¶ 13, Figures 1–2.

52. *Id.* ¶¶ 19, 24, 30.

53. *Id.* ¶ 24.

54. *Id.* ¶ 30.

55. *See id.* ¶¶ 24, 30.

56. *See Declaration to Triple Nuclear Energy*, *supra* note 41.

57. *Id.*

58. *See generally id.*

59. *Nuclear Industry Welcomes Support of Countries at Brussels Nuclear Energy Summit 2024*, WORLD NUCLEAR ASS’N (May 8, 2024), <https://world-nuclear.org/news-and-media/press-statements/industry-statement-at-brussels-nuclear-energy-summ> [<https://perma.cc/GTD6-MAKT>].

built on the recent commitment to nuclear energy utilization undertaken at COP28.⁶⁰ Three key documents came from the Summit: the Declaration on Nuclear Energy,⁶¹ the NGO Declaration on the Future of Nuclear Energy,⁶² and a nuclear energy Industry Statement.⁶³

The Declaration on Nuclear Energy, endorsed by national leaders of countries currently operating or seeking to operate nuclear power plants, reaffirms nuclear energy as a “key component” of the global strategy to reduce carbon emissions, support energy security, and promote sustainable development.⁶⁴ Countries at the Summit acknowledged nuclear energy as “a reliable and dispatchable zero-emission source of electricity generation and a firm backbone for clean energy systems to keep them resilient and sustainable.”⁶⁵ The Declaration calls for continued innovation to improve nuclear plant operational performance, enhanced efforts regarding public and private investments into nuclear power projects, and continued IAEA leadership to ensure a sustainable global framework for nuclear safety and security.⁶⁶ These components are crucial for making advancements toward SDGs seven (affordable and clean energy) and thirteen (climate action), as well as tripling nuclear capacity by 2050.⁶⁷

The NGO Declaration on the Future of Nuclear Energy acclaimed the Summit’s success and emphasized the necessity of cooperation between governments, industry leaders, and financial institutions for the successful global expansion of nuclear energy.⁶⁸ The signatories encouraged all stakeholders to consider six points related to expanding nuclear energy capacity effectively, efficiently, and securely.⁶⁹ These six points highlight practical concerns held by both public and private stakeholders within the industry as they take action to progress nuclear energy worldwide:

- (1) Pooling resources to generate specific reactor designs, stimulate upstream investment, and share risks;
- (2) Implementing policies that support sustained investment in nuclear energy as a part of clean energy, energy security, and economic development planning;
- (3) Developing and maintaining regulatory capabilities while building international partnerships that benefit from best practices;
- (4) Expanding opportunities for international collaboration to develop the nuclear workforce and talent;
- (5) Avoiding technologies that can exacerbate security concerns and committing to the highest safeguards standards; and

60. *Id.*

61. See *Nuclear Energy Summit 2024*, *supra* note 40; see also *Declaration on Nuclear Energy*, *supra* note 42.

62. See *NGO Declaration on the Future of Nuclear Energy*, *supra* note 43.

63. See *Industry Statement on Nuclear Energy Summit 2024*, *supra* note 44.

64. *Declaration on Nuclear Energy*, *supra* note 42.

65. *Id.*

66. *Id.*

67. See generally *id.*; see also *Progress towards the Sustainable Dev. Goals*, *supra* note 50.

68. See *NGO Declaration on the Future of Nuclear Energy*, *supra* note 43.

69. See *id.*

(6) Planning for responsible spent fuel management.⁷⁰

The Industry Statement by nuclear energy stakeholders approved of the progress made at the Summit and the support shown at COP28.⁷¹ The stakeholders placed a spotlight on nuclear energy's ability to make "a unique and irreplaceable contribution to our global energy needs" and achieve climate and energy security goals.⁷² The Statement also acknowledged the actions governments must take for industry leaders to effectively deliver on these ambitions for expansion, such as establishing policies that facilitate nuclear fleet deployment, promoting supply chain development, and ensuring access to climate financing mechanisms for nuclear development.⁷³

C. BUILDING ON THE SUMMIT'S SUCCESS

As the most recent SDG Progress Report stated, progress toward reaching SDGs seven (affordable and clean energy) and thirteen (climate action) is significantly behind where it should be for the goals to be met in 2030.⁷⁴ As countries recognized at the Summit, nuclear energy can provide a path forward that increases access to reliable energy while also reducing carbon emissions.⁷⁵ In fact, a recent study of the United States and France, the two countries with the most nuclear reactors, found a positive correlation between investment in nuclear energy research and improved environmental quality.⁷⁶ Continued global growth in nuclear energy capabilities will certainly have a positive impact on SDGs seven and thirteen, ensuring a sustainably powered and carbon-reduced future for all.

The momentum surrounding nuclear energy continued with six additional countries' endorsement of the Declaration to Triple Nuclear Energy.⁷⁷ Other countries, like the United States, are already progressing to tripling the world's nuclear capacity.⁷⁸ In November 2024, the United States announced a framework for scaling up its domestic nuclear energy capabilities to support climate, economic, and national security initiatives.⁷⁹

70. *Id.*

71. See *Indus. Statement on Nuclear Energy Summit 2024*, *supra* note 44.

72. *Id.*

73. *Id.* at 2.

74. See *Progress towards the Sustainable Dev. Goals*, *supra* note 50, ¶¶ 24, 30.

75. See generally *Declaration to Triple Nuclear Energy*, *supra* note 41.

76. Abdullah Emre Calgar et al., *The Influence of Nuclear Energy Research and Dev. Inv. on Environmental Stability: Evidence from the United States and France*, 31 INT'L J. SUSTAINABLE DEV. & WORLD ECOLOGY 861, 869 (2024).

77. *More Countries Sign Declaration to Triple Nuclear Capacity*, WORLD NUCLEAR NEWS (Nov. 13, 2024), <https://www.world-nuclear-news.org/articles/more-countries-sign-declaration-to-triple-nuclear-capacity> [https://perma.cc/9T2B-9LA3] (new endorsements by El Salvador, Kazakhstan, Kenya, Kosovo, Nigeria, and Turkey).

78. See *id.*

79. *Biden-Harris Administration Establishes Bold U.S. Government Targets for Safely and Responsibly Expanding U.S. Nuclear Energy and Announces Framework for Action to Achieve these Targets*, White House Office of Sci. & Tech. Pol'y (Nov. 12, 2024), <https://bidenwhitehouse.archives.gov/->

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA INTERNATIONAL LAW SECTION

424 THE YEAR IN REVIEW

[VOL. 59]

The Summit marked significant progress toward SDGs seven (affordable and clean energy) and thirteen (climate action). The expansion of nuclear energy promises to enhance access to reliable energy while reducing carbon emissions.⁸⁰ At the Summit, government leaders, NGOs, and industry stakeholders all acknowledged the potential of nuclear technology to impact the planet positively. Since the Summit, momentum in the area has continued.⁸¹ As more nations endorse the Declaration to Triple Nuclear Energy, the world should expect to see more concrete national plans to scale domestic nuclear energy capabilities.⁸² Ultimately, nuclear energy could potentially power progress toward sustainable development and significantly contribute to achieving certain UN SDGs.

ostp/news-updates/2024/11/12/biden-%E2%81%A0harris-administration-establishes-bold-u-s-government-targets-for-safely-and-responsibly-expanding-u-s-nuclear-energy-and-announces-framework-for-action-to-achieve-these-targets/ [https://perma.cc/SE3N-R5D2]; *Safely and Responsibly Expanding U.S. Nuclear Energy: Deployment Targets and a Framework for Action*, WHITE HOUSE, EXEC. OFF. OF THE PRESIDENT (Nov. 2024), <https://bidenwhitehouse.archives.gov/wp-content/uploads/2024/11/US-Nuclear-Energy-Deployment-Framework.pdf> [https://perma.cc/97D4-R9UU].

80. See *Declaration on Nuclear Energy*, *supra* note 42.

81. See *id.*

82. See *id.*

THE YEAR IN REVIEW
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