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Editorial



Unanimous Award has been issued on 12 July 2016 by the Tribunal constituted under Annex VII to the United Nations Convention on the Law of the Sea (the "Convention") in the arbitration instituted by the Republic of the Philippines against the People's Republic of China. Three years back in July 2013, the Tribunal in the South China Sea Arbitration appointed the PCA to serve as Registry for the proceedings. This arbitration concerned with the role of historic rights and the source of maritime entitlements in the South China Sea, the status of certain maritime features and the maritime entitlements they are capable of generating, and the lawfulness of certain actions by China that were alleged by the Philippines in violation of the Convention.

Without diluting the importance of India's strong economic interest in South China Sea, this editorial is making an assessment whether jurisprudence created by this decision has any implication on India's claim with their neighbouring States (South Asian States).

Firstly, the Tribunal held that there was no legal basis for China to claim historic rights to sea resources falling within the 'nine-dash line'. Having found that none of the features claimed by China was capable of generating an exclusive economic zone, the Tribunal found that it could—without delimiting a boundary—declare that certain sea areas are within the exclusive economic zone of the Philippines, because those areas are not overlapped by any possible entitlement of China. On this rationale of South China Sea, India has to advance a sound legal reasons to ensure successful historic rights in the disputed eastern sector which are also rooted in history.

Secondly, the Tribunal next considered the lawfulness of Chinese actions in the South China Sea. Having found that certain areas are within the exclusive economic zone of the Philippines, the Tribunal found that China had violated the Philippines' sovereign rights in its exclusive economic zone. This invokes the primacy to the United Nations Convention on the Law of the Sea (UNCLOS). This judgment may be considered by Government of India to adopt a dispute resolution mechanism with the neighbouring countries, so that forced jurisdiction to accept an international tribunal's adjudication on the maritime boundary would not arise. As of today India, similar to China, has not made declaration specifying forums for settlement of maritime disputes under Article 287 of the UNCLOS.

Thirdly, in the preliminary stage of South China Sea case, it held that the sovereign rights of both parties could only be determined after examining China's "historic rights" in the South China Sea. This cuts against the core of India's position on the Sir Creek boundary: that all disputes will be settled by an arbitral tribunal whose terms are "mutually agreed", and in accordance with the general principles of the 1972 Simla Agreement. Also India's position on its maritime dispute with one of the neighbouring states makes the case that the Sir Creek issue and boundary settlement are two distinct matters. India's one of the neighbouring states, on the other hand, believes that the territorial lines drawn after settling Sir Creek will stand as the reference for the maritime boundaries as well, and as such, the issues are conjoined. India has to ensure that this emerging jurisprudence and analogy in the South China Sea decision will not apply in this specific matter as common characterisation of the facts cannot be sited.

Finally, the Tribunal considered that whether China's actions since the commencement of the arbitration had aggravated the dispute between the Parties. The Tribunal found that it lacked jurisdiction to consider the implications of a stand-off between Philippine marines and Chinese naval and law enforcement vessels at Second Thomas Shoal, holding that this dispute involved military activities and was therefore excluded from compulsory settlement.

In brief, the implications of arbitral award in South China Sea are not confined to China and the Philippines alone and will take more time to fully make out its legal implications.

On the other hand there is strong criticism on ethical legitimacy of decision on the ground of composition of Tribunal which lacks the representations from the disputing region whereas generally all past sea disputes have often got either one or two judges from the disputing region.

Dr. E. M. Sudarsana Natchiappan

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WIPO-India Summer School at ISIL

The World Intellectual Property Organization (WIPO)-India Summer School on Intellectual Property was conducted by the ISIL second time in a row from 25th April – 6th May 2016, in collaboration with WIPO. 21 young professionals from different fields, including lawyers, law students, persons working in industry, engineers, etc. attended the Course.

The resource persons included WIPO representatives namely Mr. Sherif Saadallah, Executive Director, WIPO Academy, Geneva, Switzerland, Mr. Nuno Carvalho, Former WIPO Representative; Mr. Pushpendra Rai, Former WIPO Representative and Mr. Joseph Maxwell Bradley, Director, WIPO Academy, Geneva. This is the second time that the WIPO Summer School has been held in India at the ISIL. Many distinguished experts from India also delivered lectures in the Course.



Public Lecture on “In the Matter of the Chagos Marine Protected Area Arbitration (Mauritius v. UK)” by Ambassador Milan Mehtarbhan

ISIL organized a Public Lecture on “In the Matter of the Chagos Marine Protected Area Arbitration (Mauritius v. UK)” on 29 April 2016. The lecture was delivered by Amb. Milan Mehtarbhan, Former Ambassador of Mauritius to the United Nations. Dr. V. G. Hegde, Treasurer, ISIL welcomed the speaker and also gave the vote of thanks. The Mauritius approach on the subject has been the focus of interaction. The lecture witnessed lively interactions

and discussion by the participants.

15th V. K. Krishna Menon Lecture on “The Networked World: “Pax Indica” in the 21st Century” by Dr. Shashi Tharoor, Member of Parliament, Lok Sabha

In the memory of Shri V. K. Krishna Menon, former President and founder of ISIL, the ISIL organized its 15th V. K. Krishna Menon Memorial Lecture on 6

participated in the Conference. Prof. Yogesh K. Tyagi, Vice Chancellor, Delhi University, Delhi inaugurated the Conference. He shared his experience with the earlier Annual Conferences of the ISIL which was a big event and where participants shown their tremendous enthusiasm to learn and debate international law and had always received international law



June 2016 at its premises. Dr. E. M. S. Natchiappan, President, ISIL introduced the Hon'ble Chief Guest Dr. Shashi Tharoor, Member of Parliament, Lok Sabha. Dr. Tharoor delivered lecture on “The Networked World: “Pax Indica” in the 21st Century”. Dr. R. K. Dixit, EC Member, ISIL highlighted the achievements of the Chief Guest. Prof. S. K. Verma, Acting Secretary General and Executive President, ISIL proposed the vote of thanks.

45th Annual Conference of the ISIL

The Indian Society of International Law (ISIL) organized its 45th Annual Conference on May 7-8, 2016 at its premises. More than 150 delegates comprising law faculty members, researchers, students and lawyers from different parts of the country and representatives from several embassies and the ministries

scholars, teachers from all over India. He highlighted importance of identified themes of the Conference. He wished the Conference a great success. Dr. E. M. S. Natchiappan, President, ISIL welcomed the Chief Guest and the participants. The event also marked with felicitation of Prof. Yogesh Tyagi a life member of the ISIL. Dr. R. K. Dixit read the achievements of Prof. Yogesh Tyagi in the field of international law.



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On this occasion, Prof. Tyagi released a book written by Prof. Saligram Bhat. Prof. S. K. Verma, Secretary General, ISIL briefly outlined the scheme of the Conference and proposed a formal vote of thanks.

Four sessions were organized to discuss four themes. The first session (morning) held on 7 May 2016 focusing on *“Two Decades of the World Trade Organization: Issues and Challenges”* was chaired by Prof. A. K. Koul, Former Vice Chancellor, NLU, Jodhpur and Co-chaired by Dr. Ujal Singh Bhatia, WTO Appellate Body Member who also gave key note address in the session. Eminent panelists namely Prof. Abhijit Das Head, Centre for WTO Studies, IIFT, New Delhi, A. Saravanan & Dr. S.R. Subramanian, IIT, Kharagpur and Ms. Swarnim Shrivastava, Clerk cum RA Competition Appellate Tribunal presented their papers on *“WTO DSS and India”*, *“Role of Amicus Curiae Participation in the WTO and International Investment Dispute Settlement”*, *“Finding WTO Remedy for Market Economy of China Law”* respectively. The second session (afternoon) was on the *“The Paris Agreement on Climate Change: Challenges for the Future”* chaired by

Prof. B. C. Nirmal, Vice Chancellor, NUSRL, Ranchi and Co-chaired by Shri Sanjay Parikh, EC Member, ISIL. Eminent panelists namely Dr. Anwar Sadat, Assistant Professor (Senior), ISIL, Dr. Anupam Jha, Assistant Professor (Senior), DU, Delhi, Ashutosh Raj Anand, Assistant Professor, Amity Law School, Delhi, Ms. Chandrika Mehta and Naveen S., Assistant Professor, School of Legal Studies, CUSAT presented papers on *“Paris Agreement- A Different Approach to Deal with the Challenge of Climate Change”*, *“Paris Agreement and India: Dalliance or Serious Alliance?”*, *“Low Carbon Technologies for Our Cities of Future: Examining Mechanisms for Successful Transfer and Diffusion”*, and *“Paris Agreement- Opportunities and Challenges for a Developing Countries Perspective”*, respectively.

The third session was held on the theme *“Law of the Sea: Contemporary Challenges”* and chaired by Dr. P. S. Rao, President, The Institut de Droit international. Eminent panelists namely, Shri Vijay Jayshwal, Kathmandu School of Law, Nepal and Shri Vinai Kumar Singh Assistant Professor (Senior), presented paper titled *“Scope and Interpretation of Article 125 of UNCLOS III: Testing the Legality of Procedural Arrangement”*, and *“Dispute Settlement System under*

the UNCLOS” respectively. The fourth session on 8 May 2016 (morning session) was held on *“Protection of Refugees: Present Challenges and Probable Solutions: R2P”*. Dr. Kavita Belani, Senior Protection Officer, UNHCR chaired the Session and Mr. Rene Boeckli, Deputy Head of Delegation, ICRC, New Delhi co-chaired the Session. Eminent panelists Prof. B. C. Nirmal, Vice Chancellor, NLSRL, Ranchi, Prof. K. Elumalai, Director, IGNOU, Ms. Priyanka Bose Kanta, Lecturer, Department of Law, Eastern University, Dhaka and Harigovind P. C., Assistant Professor, Cochin University of Science & Technology, Kochi. Finally, Dr. E. M. S. Natchiappan, gave valedictory address and proposed a formal vote of thanks. The Annual Conference concluded with General Body Meeting held at 2.30 pm on 8 May 2016.

15th Summer Course on International Law

The ISIL organized its 15th Summer Course on International Law at its premises from 30 May – 10 June 2016 and the Course was attended by 160 participants from many parts of India. The Summer Course introduced all the branches of international law and highlight contemporary issues to the

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participants. Inaugural lecture was given by Prof. B. S. Chimni, Professor of International Law, Jawaharlal Nehru University, New Delhi on “*Nature and Scope of International Law*” on Monday 30 May 2016. Prof. Chimni said, “*I am happy to see so many of you have chosen to participate in the 14th Summer Course on International Law organized by the Indian Society of International Law. I am convinced that it is the only specialized course of this nature which is filled with international law experts that could come out with some practical and workable ideas in this regard. I wish the participants a great success.*”

The substantive lectures of the Course were spread over two weeks. Lectures were delivered on vital and contemporary areas of international law, viz., General Principles of Public International Law, Introduction to Private International Law, International Institutions, International Human Rights Law, International Humanitarian and Refugee Law, International Criminal Law, Maritime Law, Public International Trade Law, National and International Arbitration, International Environmental Law and Sustainable Development. The faculties for the Summer Course comprised of eminent international law experts. Justice B. S. Chauhan, Judge, Supreme Court of India gave valedictory address and also distributed the certificate to the participants. The Course witnessed

lively interactions and discussion by the participants.

Monthly Discussion Forum

Monthly discussions were organized on the following topics:

“*Jurisdictional Issues in the 'Marshall Islands Cases' before the International Court of Justice*” by Amb. Gudmundur Eiriksson, Professor, O. P. Jindal Global University, Sonapat, on 8 April 2016

“*International Space Governance: Challenges for the Global Space Community*”, by Mr. Eligar Sadeh, President, Astroconsulting International, Editor-in-Chief of Astropolitics on 13 May 2016

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UN Commission on International Trade Law Adopts the UNCITRAL Model Law on Secured Transactions

On 1 July 2016, the United Nations Commission on International Trade Law (UNCITRAL) adopted the UNCITRAL Model Law on Secured Transactions (the “Model Law”) at its 29th session in New York. The Model Law deals with security interests in all types of tangible and intangible movable property, such as goods, receivables, bank accounts, negotiable instruments, negotiable documents, non-intermediated securities and intellectual property with few exceptions, such as intermediated securities. The Model Law follows a unitary approach using one concept for all types of security interest, a functional approach under which the Model Law

applies to all types of transaction that fulfil security purposes, such as a secured loan, retention-of-title sale or financial lease, and a comprehensive approach under which the Model Law applies to all types of asset, secured obligation, borrower and lender. In this way, the Model Law is intended to address the main problem of secured transactions laws around the world, that is, the multiplicity of regimes that creates gaps and inconsistencies. The Model Law includes a set of Model Registry Provisions (the “Model Provisions”) that can be implemented in a statute or administrative decree, or in both. The Model Provisions deal with the registration of notices of security interests in a publicly accessible Registry to make a security interest effective against third parties and to provide an objective basis for determining the priority of a security interest over the rights of competing claimants.

By providing a transparent, comprehensive and rational legislative framework of secured financing, the Model Law is expected to have a beneficial impact on the availability and the cost of credit, in particular to small and medium-size enterprises in developing countries. This will not only assist in their market inclusion and alleviating poverty, but also contribute to achieving Goal 1 of the 17 Sustainable Development Goals on ending poverty. The Model Law will be accompanied by an analytical commentary, called the “guide to enactment”, which is intended to assist States in enacting the Model Law. The Commission referred the preparation of the commentary to its Working Group VI on Security Interests). The Model Law is based on the United Nations Convention on the Assignment of Receivables in International Trade, the UNCITRAL Legislative Guide on Secured Transactions, the Supplement on Security Interests in Intellectual Property and the UNCITRAL Guide on

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the Implementation of a Security Rights Registry. For the treatment of security interests in insolvency, the Model Law relies on the recommendations of the UNCITRAL Legislative Guide on Secured Transactions and the UNCITRAL Legislative Guide on Insolvency Law. The work on the preparation of the Registry Guide was undertaken by the UNCITRAL Working Group VI on Security Interests from its 24th session in 2013 until its 29th session this year.

Delhi High Court Allowed Import of UK Treaty into France Treaty: Invokes MFN Clause

On 28 July 2016, the Delhi High Court ("Court") in the case of *Steria India Ltd. v. Commissioner of Income Tax and Anr* [W.P.(C) 4793/2014 & CM APPL. 9551/2014] relying on the most favored nation clause under the India - France Double Taxation Avoidance Agreement ("India - France DTAA") held that payments made by an Indian company to a French company for management services does not constitute Fees for Technical Services ("FTS").

Steria (India) Limited ("SIL / Taxpayer"), a public limited company registered and resident in India primarily providing IT driven services had entered into a Management Services Agreement ("MSA") with one of Steria's group entities, a limited liability partnership, in France ("Steria France"). Under the MSA, Steria France was to provide a myriad of management services including corporate communication, group marketing information systems, human relation services ("Management Services") to SIL with a view to rationalize and standardize the business conducted by SIL. The Services were provided by Steria France through telephone, fax, e-mail only and there was no presence of any personnel of Steria France in India and hence no risk of Permanent

Establishment (fixed or agency) of Steria France in India existed. Prior to filing the writ petition before the Court, the Taxpayer had approached the Authority for Advance Ruling ("AAR") seeking a ruling on whether the payment made by the Taxpayer for the Management Services provided by Steria France will be taxable in India in the hands of Steria France as per the provisions of the India - France DTAA. The argument of the Taxpayer was that Clause 7 of the Protocol did not require any separate notification and could straightway be operationalised was not accepted by the AAR. Clause 7 of the protocol to the India - France DTAA states that if a lower rate of tax or a restricted scope is provided for in any other treaty that India enters into with any other OECD Member country, then that lower rate or restricted scope will be applicable for the purposes of the India - France DTAA ("Most Favored Nation Clause / MFN Clause"). The Taxpayer argued that the provisions of the India - UK DTAA pertaining to Fees for Technical Services ("FTS") were more restrictive than as provided in the India - France DTAA. The India - UK DTAA expressly excludes fees for managerial services from the ambit of FTS. Further, it also provides that for a service to qualify as FTS, the service provider must 'make available' technical knowledge, experience, skill, know-how or processes to the persons to whom the service is rendered. Accordingly, as per the provisions of the Protocol the restrictive provisions of India - UK DTAA should be imported into the India- France DTAA.

The AAR rejecting the argument of the Taxpayer held that the Protocol in the India - France DTAA could not be treated as forming part of the DTAA. The AAR further held that the restrictions imposed by the Protocol were only to limit the taxation at source for the specific items mentioned therein. The restriction was only on the rates. Further, it held that the 'make available' clause found in the India - UK DTAA could not be read into the

expression 'fee for technical services' occurring in the India-French DTAA unless a notification was issued by the Indian tax authorities to incorporate the less restrictive provisions of the Indo-UK DTAA into the India-France DTAA. Hence concluding that the payment made for managerial services did constitute FTS.

The Delhi High Court ruled in favour of the Taxpayer and over ruled the decision of the AAR held that the Protocol becomes automatically applicable and there is no need for a separate notification incorporating the beneficial provisions of the India - UK DTAA into the India - France DTAA. The Court also dismissed the contention of the Revenue that when reference is made to one convention signed between India and another OECD member state for the purposes of ascertaining if it had a more restrictive scope or a lower rate of tax, then only that convention has to be used for both the purposes i.e. the taxpayer shall not be allowed to rely upon one convention for a lower rate of tax and subsequently refer to another convention to take advantage of a more restricted scope. The Court held that the words in the MFN Clause "a rate lower or a scope more restricted" envisages that benefit could accrue on both fronts i.e. a lower rate or more restricted scope - one does not exclude the other. Further, the other expression "if under any Convention, Agreement or Protocol signed after 1-9-1989 between India and a third State which is a member of the OECD" also indicates that the benefit could accrue in terms of lower rate or a more restrictive scope under more than one DTAA which may be signed after 1st September 1989 between India and a State which is an OECD member. The purpose of the MFN Clause is to afford to a party to the India-France DTAA the most beneficial of the provisions that may be available in another DTAA between India and

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another OECD country. The Court further held that the language in the Protocol makes it self-operational and since the Protocol came into effect on the same day as the DTAA and provides that it is an integral part of the DTAA, the fact that the DTAA has been notified, there is no need for the Protocol itself to be separately notified or for the beneficial provisions in some other Convention between India and another OECD country to be separately notified to form part of the India-France DTAA. The Court also endorsed the judgment of the Kolkata Tribunal in the case of DCIT v. ITC Ltd. (on 28 December, 2001; 2002 82 ITD 239 Kol) wherein also it was held that benefit of a lower rate or restricted scope of FTS under the India - French DTAA by virtue of the MFN clause was not dependent on any further action by the respective governments. Based on the above, the Delhi High Court held that the FTS provision of the India- UK DTAA should be read into the India- France DTAA and hence Managerial Services provided by Steria France did not constitute 'fees for technical services'. Accordingly, there was no obligation on SIL to withhold such tax under the ITA.

Paris Climate Accord

By 13 May 2016, as 177 States have signed the Paris Agreement for global action on climate change enters into force as soon as possible. Adopted in Paris by the 196 Parties to the UN Framework Convention on Climate Change (UNFCCC) at a conference known as (COP21) December 2015, the Agreement's objective is to limit global temperature rise to well below 2 degrees Celsius, and to strive for 1.5 degrees Celsius. It will enter into force 30 days after at least 55 countries, accounting for 55 per cent of global greenhouse gas emissions, deposit their instruments of ratification.

17 States have already deposited their instruments for ratification. These Parties include Barbados, Belize, Fiji,

Grenada, Maldives, Marshall Islands, Mauritius, Nauru, Palau, Palestine, Saint Kitts and Nevis, Saint Lucia, Samoa, Somalia, Norway, Peru and Tuvalu. India and United States supported early entry into force of Paris Agreement and encouraged all countries to accelerate their domestic processes to join or ratify it.

Right to Adequate Housing in India a Matter of 'Urgency' – UN Human Rights Expert

Expressing grave concern over a number of issues regarding the right to housing in India, an independent United Nations human rights expert Ms. Leilani Farha, Special Rapporteur on the right to adequate housing on 22 April 2016, called on the Government of India for immediate attention and implementation of the right to ensure adequate housing for the most disadvantaged. "I am extremely concerned for the millions of people who experience exclusion, discrimination, evictions, insecure tenure, homelessness and who lack hope of accessing affordable and adequate housing in their lifetimes," Leilani Farha, warned at the end of her two-week official visit to India. The UN expert further urged the Government of India to adopt national housing legislation based in both its national and international human rights commitments. A moratorium on evictions, immediate obligations to adequately address homelessness, and that is in line with some of its most progressive state plans for in situ rehabilitation for slum dwellers are of great urgency and priority, Ms. Farha noted.

Secretary-General Appoints 12 New Members to UN University Council

On 28 April 2016, United Nations Secretary-General Ban Ki-moon and Director-General Irina Bokova of the UN Educational Scientific and Cultural Organization (UNESCO) appointed 12 new members to the governing UN University (UNU) Council. The new

appointees, who will take office as of 3 May 2016, replace the retiring 2010-2016 cohort of UNU Council members and will serve for terms of either three or six years. The main functions of the Council are to formulate the principles and policies of the UNU, govern its operations, and consider and approve its biennial budget and work programme. Appointed members of the UNU Council serve in their individual capacity – not as representatives of their country's Government – and are selected with the aim of achieving a geographic and gender balance, with due regard for major academic, scientific, educational and cultural trends, as well as each member's fields of expertise.

The new members of the UNU Council are: Ernest Aryeetey (Ghana), Vice-Chancellor, University of Ghana; Carlos Henrique de Brito Cruz (Brazil), Scientific Director, São Paulo Research Foundation; and Professor, Gleb Wataghin Physics Institute, State University of Campinas; Simon Chesterman (Australia), Dean, Faculty of Law, National University of Singapore; Elizabeth Cousens (USA), Deputy Chief Executive Officer, United Nations Foundation; Isabel Guerrero Pulgar (Chile), Director, IMAGO Global Grassroots, and lecturer at Harvard and MIT; Angela Kane (Germany), Senior Fellow, Vienna Centre for Non-Proliferation and Disarmament, and Professor, SciencesPo, Paris; Segenet Kelemu (Ethiopia), Director General and CEO, International Centre of Insect Physiology and Ecology; Bassma Kodmani (Syria), Executive Director, Arab Reform Initiative; Radha Kumar (India), Director General, Delhi Policy Group; Irena Lipowicz (Poland), Professor, Cardinal Stefan Wyszyński University (Warsaw); Tsuneo Nishida (Japan), Director, Institute for Peace Science, Hiroshima University, and Director, Toho Zinc Co.Ltd.; Lan Xue (China), Dean, School of Public Policy

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and Management, Tsinghua University, and Director, China Institute for S&T Policy

General Assembly Elects Norwegian Diplomat as Head of UN Environment Programme (UNEP)

Following the nomination by the United Nations Secretary General, the General Assembly, on 13 May 2016, elected Erik Solheim of Norway as Executive Director of the United Nations Environment Programme (UNEP) for a four-year term. Mr. Solheim is currently Chair of the Development Assistance Committee of the Organization for Economic Cooperation and Development (OECD), a post he has held since 2013, and is serving as UNEP's Special Envoy for environment, conflict and disaster. Known as the 'green' politician, he has focused on the challenge of integrating environmental and developmental issues. He was Norway's Minister of the Environment and International Development from 2007 to 2012, and served as Minister of International Development from 2005 to 2007. During his ministerial tenure, Norway reached 1 per cent for overseas development assistance and the unique Nature Diversity Act was passed. He initiated the process leading to the global coalition to conserve and promote sustainable use of the world's rainforests, known as the UN Programme on Reducing Emissions from Deforestation and Forest Degradation (UN REDD). Mr. Solheim will succeed Achim Steiner of Germany, who has led UNEP for the past 10 years.

Sweden, Bolivia, Ethiopia and Kazakhstan Elected to Security Council

The United Nations General Assembly on 28 June 2016, elected Sweden, Bolivia, Ethiopia and Kazakhstan to serve on the UN Security Council for a period of two years, starting from 1 January 2017. After rounds of voting at UN Headquarters in New York, only one non-permanent Council seat remains to be filled. Italy and the Netherlands had been vying for the remaining seat, but the voting yielded no clear winner.

The two countries was then suggested sharing the two-year term, each with a one-year period, with a decision on this proposal postponed for another day.

At the election, the General Assembly members voted by secret ballot for five seats divided by geographical grouping – three from Africa and the Asia-Pacific region, one from Eastern Europe, and one from Latin America and the Caribbean. Bolivia and Ethiopia were chosen by their regional groups and had no competitors. Kazakhstan won the seat reserved for Asia Pacific against Thailand, while Italy, the Netherlands and Sweden had competed for two seats for Western Europe. The newly-elected countries will replace Spain, Malaysia, New Zealand, Angola and Venezuela. Other current existing non-permanent members are Japan, Egypt, Senegal, Ukraine and Uruguay.

The \$50 BILLION Treaty Interpretation Question: Dutch Court Sets Aside Yukos Award Against Russia

On 20 April 2016, Russia scored a huge victory when the Hague District Court (the Netherlands court) in *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, UNCITRAL, PCA Case No. AA 227 set aside a \$50 billion arbitral award in favor of former shareholders of Yukos. The \$50 billion Yukos award (that's BILLION, with a "B"), is the largest arbitration award ever issued, was issued under the authority of the Energy Charter Treaty (ECT). The arbitral tribunal (hosted at the Permanent Court of Arbitration) had found that the Russian government was liable for expropriating the former shareholders of Yukos through use of tax laws, harassment, criminal punishments, and other government measure without providing adequate compensation. The Hague District Court set aside the arbitral award given on jurisdictional grounds. The Dutch court held that Russia was not bound to arbitration under the Energy Charter Treaty because it never ratified the ECT. Thus in brief, two year back in

2014, the arbitral tribunal issued interim award that Russia was bound under Article 45, which calls for provisional application of the treaty pending ratification. But on 20 April 2016, the Hague District Court disagreed with the arbitral award rendered by the PCA.

New Decision Finds UN Responsible in Kosovo Lead Poisoning Case

The Human Rights Advisory Panel has found the UN Mission in Kosovo (UNMIK) responsible for breach of a number of human rights provisions connected with lead poisoning of the Roma population following the 1999 conflict. Under Section 2 of UNMIK Regulation No. 2006/12, the Panel has jurisdiction over complaints relating to alleged violations of human rights "that had occurred not earlier than 23 April 2005 or arising from facts which occurred prior to this date where these facts give rise to a continuing violation of human rights". The facts of the case can be summarized as follows: the complainants are 138 members of the Roma, Ashkali and Egyptian (RAE) communities in Kosovo who used to reside in the camps for internally displaced persons (IDPs) set up in northern Mitrovicë/Mitrovica since 1999. All complainants claim to have suffered lead poisoning and other health problems on account of the soil contamination in the camp sites due to the proximity of the camps to the Trepca smelter and mining complex and/or on account of the generally poor hygiene and living conditions in the camps. The Trepca smelter extracted metals, including lead, from the products of nearby mines from the 1930s until 1999.

In the recently released decision on 26 February 2016 the Human Rights Advisory Panel noted at para. 207 that: "the heavy exposure to contamination, coupled with poor living conditions in the camps, a situation which lasted for

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more than 10 years, three of them within the Panel's jurisdiction, was such as to pose a real and immediate threat to the complainants' life and physical integrity". The Panel also found that the bad health conditions incurred by the complainants, and especially by children and pregnant women, as a result of their prolonged exposure to lead. Ultimately, the Panel found that UNMIK breached articles 2,3 and 8 of the ECHR (including the right to life, the right to be free from degrading and inhumane treatment, and the right to family life), Arts 2, 11, 12 and 23 of the ICESR (including the right to health and adequate standard of living), Arts. 2 and 26 of the ICCPR, and various provisions of CEDAW and the CRC due to the increased risk that pregnant women and children face from lead exposure.

With regards to remedies, the Panel recommended that UNMIK: " should publicly acknowledge, including through the media, UNMIK's failure to comply with applicable human rights standards in response to the adverse health condition caused by lead contamination in the IDP camps and the consequent harms suffered by the complainants, and should make a public apology to them and their families; must take appropriate steps towards payment of adequate compensation to the complainants for material damage in relation to the finding of violations of the human rights provisions listed above; must take appropriate steps towards payment of adequate compensation to

the complainants for moral damage in relation to the finding of violations of the human rights provisions listed above".

This decision can be contrasted, in particular, with the fate of a decision rendered in 2011 under a different process established by the General Assembly, in which the UN's immunities blocked the claims. In that case, a claim was brought by private claimants to the UN under a procedure established by General Assembly Resolution 52/24768 within six months from the time of the injury, asking for compensation and remedies for economic losses. The UN rejected the claim on July 25, 2011, stating by letter that the claims "do not constitute claims of a private law character and, in essence, amount to a review of the performance of UNMIK's mandate . . . therefore, the claims are not receivable."

30th Ratification of the International Criminal Court's Crime of Aggression Amendment by Palestine

On June 27 2016, Palestine deposited the thirtieth instrument of ratification of the International Criminal Court's crime of aggression amendment, with 30 ratifications being the required number for activation. However, one more vote to activate the amendment, to occur after January 1, 2017, is required by the ICC's Assembly of States Parties for the ICC to be able to exercise jurisdiction. Thus, Palestine's deposit did not cause the amendment to become operational, although it brought it a step closer to the activation vote planned for December 2017.

WTO Members Debate Appointment/ Reappointment of Appellate Body Members

The US announced its decision to block the reappointment of Judge Seung Wha Chang, a distinguished jurist from South Korea at the May 23, 2016 at the DSB meeting. The reason offered was that the US disagreed with the jurisprudence articulated in four recent Appellate Body decisions on which Judge Chang was one of the three appellators on the division deciding the case. Two of those cases involved successful challenges by China against countervailing duties imposed by the US. At the DSB Meeting, the US stated clearly that Appellate Body jurists needed to be "held responsible" and "accountable for the views they have endorsed" (Statement by the United States at the Meeting of the WTO Dispute Settlement Body, 23 May 2016). The United States stated that it did not support Mr Seung Wha Chang's reappointment and would object to any proposal to this effect because, in its view, his service did not reflect the role assigned to the Appellate Body. As to the letter circulated by Appellate Body members on 18 May 2016 in which the six colleagues of Mr Chang expressed their views on the issue and support and respect for him, the United States considered the Appellate Body's action "unfortunate", noting that any decision concerning appointment or reappointment of Appellate Body members must be made by the DSB and not the Appellate Body.

Forthcoming Events

14-15 July 2016: Training Workshop on "Intellectual Property Rights and WTO Accountability-Scope of Patenting" sponsored by the Ministry of Environment, Forest & Climate Change & conducted by the ISIL

22-25 September 2016: 16th Henry Dunant Memorial Moot Court Competition (India Round)

15-16 October 2016: Two-day Workshop on Corporate Law: International and National Perspective

4-5 November 2016: Two-day Training Programme for Awareness/Sensitization on IPR for MSMEs

17 November 2016: A Special Lecture on "Contribution of Space Law and Policy to Space Governance and Space Security in the 21st Century" by Mr. Niklas Hedman, Chief of the Committee, Policy and Legal Affairs Section of the United Nations Office for Outer Space Affairs (UNOOSA)

25 November 2016: Round Table Discussion in Memory of Judge Nagendra Singh

9 December 2016: Human Rights Day Seminar

26-30 December 2016: Sixth Winter Course on Settlement of Disputes in International Law

5-30 June 2017: Diploma in European, International and Comparative Law jointly organized by the ISIL and Faculty of Law, University of Lisbon