The Indian Society of International Law

NEWSLETTER

VOL. 18, No. 2, April - June 2019

For members only

INSIDE

Published by:
The Indian Society of International Law
V.K. Krishna Menon Bhawan,
9, Bhagwan Das Road,
New Delhi - 110001 (INDIA)
Tel.: 23389524, 23384458-59
Fax: 23383783
E-mail: isil@giasdl01.vsnl.net.in
Website: www.isil-aca.org

Editorial

On 6 May 2019, the Appeals Chamber of the International Criminal Court (ICC) delivered its judgment in the ***Jordan Referral re Al-Bashir Appeal***. It confirmed the Pre-Trial Chamber II finding that Jordan failed to comply with its obligations under the Rome Statute by not arresting and surrendering as requested by the ICC the then Sudan President in March 2007 when he visited Amman. The AC (Appeals Chamber) however by majority by 3 of 5 judges reversed the Pre-Trial Chamber II decision to refer Jordan to the UNSC (UN Security Council) for its failure to arrest.

Darfur, Sudan situation is unique. This was the first case referred by the UNSC to the ICC against a non-party State, Sudan by adopting a legally binding resolution 1593 (2005) under Chapter VII of the UN Charter. This was the first case a sitting Head of State was indicted for crimes against humanity, war crimes and also genocide, and two arrest warrants were issued against him. The AU (African Union) has been consistently objecting to the ICC exercising jurisdiction in this case, especially issuance of arrest warrants against Head of an African State disregarding his immunities under CIL (customary international law). AU was campaigning to seek advisory opinion of the ICJ (International Court of Justice) on the subject of immunities of Heads of State.

In the present appeal, the AC while the rejecting Jordan plea held that there was no rule of customary international law that would have given Mr. Al-Bashir immunity from arrest and surrender by Jordan. Further, it said that the Head of State immunity did not stand in the way of arrest by Jordan, based on the interplay between the relevant provisions of the Statute and Sudan's obligation to 'cooperate fully' with the (ICC) pursuant to paragraph 2 of Resolution 1593. (paras 117 & 118 of Judgement)

It may be noted that the Heads of State, Heads of Govt and Foreign Ministers would enjoy immunity from foreign criminal jurisdiction is well established in CIL. The ICJ affirmed this in the ***Arrest Warrant*** case between ***DRC and Belgium*** in 2002. The ICJ ruled that a foreign minster throughout the duration of his or her office, he or she when abroad enjoys full immunity from criminal jurisdiction and inviolability. He enjoys such immunity in respect of all his acts whether 'official' or 'private', and also in respect of acts done by him prior to assuming the office. (Para 54). The ICJ ruled that war crimes or crimes against humanity; or the international conventions for prevention and prosecution of certain serious crimes would in no way affects immunities under customary international law, including those of Ministers for Foreign Affairs. (paras 58 & 59).

The ICJ however noted 4 exceptions. First, Foreign Minister cannot claim immunity from his national courts. Second he enjoys no immunity before foreign courts, if his government waves his immunities. Third, upon ceasing to be Foreign Minister, he would not be entitled to immunity for the acts committed by him prior to or subsequent to his term of office and also the for his private acts during his tenure as Foreign Minister (para 61). Fourth, no immunity before the international criminal tribunals established by the UNSC under Chapter VII of the Charter. The ICJ also noted that the ICC created by the Rome Statute by virtue of its Article 27(2) could also be an exception to the immunity rule.

It may be noted that this derogation would be applicable between the State Parties of the Rome Statute and would not affect the third parties' rights.

Pravin H. Parekh

Recent Activities

International Symposium on International Humanitarian Law, Human Rights Law on Torture and Space Law

International Symposium on International Humanitarian Law, Human Rights Law on Torture and Space Law was jointly organized by the ISIL along with the Indian Space Research Organization (ISRO), ICRC, New Delhi and Amnesty International Law and Indian Journal of Law and International Affairs (IJLIA)-student run journal. It was held on 13-14 April 2019 at the ISIL. 200 law teachers and students participated in the Symposium. It was inaugurated by Hon'ble Shri Soli J. Sorabjee, Former Attorney General for India and at this occasion, a Special address was given by Hon'ble Shri Ashwani Kumar, Former Union Minister of Law and Justice, Govt of India. Shri Pravin H. Parekh, President, ISIL presided the inaugural session and Shri M. K. Rao, Secretary General, ISIL gave the welcome address. At this occassion, a book titled "Space Commercialization: Possible, Challenges and Way Forward" by Dr. G. S. Sachdeva was released by the Chief Guest Shri Sorabjee." More than 100 abstracts on above-mentioned topics were received. Mr. V. Balakrishna, Associate Director (Policies) and Prof. J. L. Kaul, EC Member and Former Vice Chancellor, HNB Central Univeristy, Garwal along with Mr. M. Kotewara Rao, Secretary General, ISIL distributed the certificates to the participants. In each of the sub-topic, the top scorers were given certificate of appreciation for their paper presentation. In IHL sub-theme, two papers received equal marks and were

declared top scorer: One paper jointly written by three authors namely Mrittika Guha Sarkar, Research Assistant, Asian African Legal Consultative Organisation along with Pranav Bhaskar Tiwari and Shruti Shreya, Research Assistant, Symbiosis Law School, NOIDA and another joint winner was Anirudha Choudhury, Assistant Professor, KIIT Law School, Odisha. In session on Human Rights on Torture, joint winners were Vandita Khanna, Student (BCL), University of Oxford and again three authors together Vikramjit Mullick, Shalini Kothari, Abhra Jena, Students, Amity University, Kolkata secured top scores. In Space Law session, Bholenath, Student, CNLU Patna and M.Chandana, Satyender Saharan, Sejal, Students, Damodaram Sanjivayya National Law University, Visakhapatnam were awarded joint winners.

48th Annual Conference of the ISIL

The Indian Society of International Law (ISIL) organized its 48th Annual Conference on 4-5 May 2019 at its premises. More than 200 delegates comprising law faculty members, researchers, students and lawyers from different parts of the country and representatives from several embassies and ministries participated in the Conference. Honble Mr. Justice Pinaki Chandra Ghose, First Lokpal of India inaugurated the Conference. Justice Ghose highlighted the importance of identified themes of the Conference. He wished the Conference a great success. Shri M. Koteswara Rao, Secretary General, ISIL welcomed the Chief Guest and the participants. Shri Pravin H. Parekh, President, ISIL gave the presidential address. Prof. Manoj Kumar Sinha, Vice President, ISIL briefly outlined the scheme of the Conference. Prof. Dabiru Sridhar Patnaik, Treasurer, ISIL proposed a formal vote of thanks.

Four sessions were organized to discuss four themes. The first session (morning) held on 4 May 2019 focusing on Trade, Globalization and Human Rights was chaired by Shri M. Koteswara Rao, Secretary General, ISIL and Co-chaired by Prof. Y. S. R. Murthy, Vice President, ISIL. Eminent panelists Dr. Sudhir Kochhar, Ex-ICAR Scientist, Dr. Srinivas Burra, Assistant Professor SAU, New Delhi, Prof. Vijay Kumar Singh, UPES, Dehradun, Shri Amrandra Kumar, Assistant Professor, Law Centre II, University of Delhi presented their papers on Plant Varieties Protection as Industrial Property, An India-ASEAN Perspective Exploring Domestic Remedies for Human Rights Violation by Business Entity, Business and Sustainable Development Goals (SDGs): A Critical Analysis of Integration in Municipal Law in India Responsibility of International Financial Institutions under International Law: Some Reflections from International Human Rights Law respectively. Second session of the Annual Conference was held on Climate Change chaired by Prof. Bharat Desai, CILS, Jawaharlal Nehru University, New Delhi. Eminent panelists namely Dr. Vijeta Rattani, Environmental Law Exper, Dr. Stellina Jolly, Assistant Professor, SAU, New Delhi, Dr. Anwar Sadat, Assistant Professor (Senior), ISIL, New Delhi

presented their papers titled India and Climate Change: Evolution and Shift of Stances and Policy Landscape, Implementing the Paris Agreement: An Analysis of Climate Laws and Policies in India, Role of No Harm Rule in Governing Climate Geo- Engineering respectively.

The third session was held on the theme Refugee, Migration and Displaced Person was chaired by Hon'ble Justice Madan B. Lokur, Former Judge, Supreme Court of India and Co-chaired by Prof. Monica Chawla, Punjabi University, Patiala. Opening Remarks was made by H. E. Ms. Yasuko Shimizu, Chief of the Mission, UNHCR. Eminent panelists namely, Prof. Rashmi Salpekar, Dean, VIPS, Dr. Benarji Chakka, Associate Professor, Alliance University, Bangalore, Dr. Nafees Ahmad, Assistant Professor, South Asian University, New Delhi, Dr. Ruchi Lal, Assistant Professor Amity Law School, Noida, Shrawani Shagun, Professor of Law Mody University, Rajasthan presented their papers titled Conflict between the Status of Refugees and Illegal Migrants: Response of International Law, GCR and Its Impact on Existing Normative Refugee Protection System: An Analysis, New Hopes and New Actions in Post-GCR Scenario: Exploring Avenues for Protecting the Refugees in South Asia, Children Refugees: A Child Rights Perspective of International Refugee Law and Convention on the Rights of Child for Protection of Refugee Children, Determining the Legal Status of Rohingyas: Conundrum Need to be Addressed respectively. The fourth and last session was held on 5 May 2019 on the theme Cross Border Terrorism and International Law chaired by Maj Gen Nilendra Kumar, EC Member, ISIL. Prof. M. Gandhi, Dean, VIT Law School, VIT University, Chennai gave key note address. Panelists including Dr. Santosh Upadhayay Assistant Professor, LC-II, Delhi University, Delhi, Anirudha Choudhury, Assistant Professor KIIT Law School, Orissa, Dr. Anurag Deep, Associate Professor, ILI, New Delhi, Ms. Julian Seal, Teaching Assistant, NUSRL, Ranchi, Udai Pratap Singh, Research Scholar, RMLNLU Lucknow presented their papers titled Making Sense of Right to Self Defence against Terrorism, State Sponsored Terrorism and International Law: The Myth Debunked, Criminalizing Membership of Terrorist Organization and the Indian Supreme Court: Can the USA Model be Applicable, Terrorism as a Crime under the ICC Statute?, Humanitarian Intervention: Necessity or Imperialism. Finally, Shri Pravin H. Parekh, President, ISIL gave the valedictory address and Shri M. Koteswara Rao, Secretary General, ISIL proposed a formal vote of thanks. The Annual Conference concluded with General Body Meeting held at 2.30 pm on 5 May 2019.

18th Summer Course on International Law

The ISIL organized its 18th Summer Course on International Law at its premises from 10–21 June 2019 and the Course was attended by 190 participants from many parts of India. The Course was intended to update the knowledge of international law among students. The Course was inaugurated by Dr. Rasik Ravindra, Former Member, Commission on the Continental Shelf on 10 June 2019. On this occasion, the Chief Guest also released new edition of text book on Public Internation Law written by Prof. S. K. Verma, Former Professor Delhi University. Shri M. Koteswara Rao, Secretary General, ISIL gave welcome address and Prof. Manoj Kumar Sinha, Vice President, ISIL highlighted the importance of international law and also the summer course to the participants. A Panel Discussion on was held in the last session on the topic 'Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965' with two panelists namely Dr. V. D. Sharma, Addl Secretary, Legal and Treaties Division, MEA, Govt of India and Shri M. Koteswara Rao, Secretary General, ISIL, New Delhi. Hon'ble Mr. Justice Dipak Misra, Former Chief Justice of India gave the valedictory address and also distributed certificates to the participants. The course witnessed lively discussion among the participants.

Monthly Discussion Lectures

Legality of Pre-Emptive Strike in International Law in the Context of Recent India-Pakistan Hostility", by Dr. Prabhakar Singh, Associate Professor, CILS, Jindal Global Law School, Sonipat on 5 April 2019.

"Normative Epistemology of Right to Self-Determination: Indian Perspective" by Mr. Abhishek Mishra, Doctoral Fellow, Albrecht Mendelssohn Bartholdy Graduate School of Law, University of Hamburg on 7 June 2019.

RECENT DEVELOPMENT

ICJ SEISED OF DISPUTE BETWEEN GUATEMALA AND BELIZE

On 7 June 2019, the International Court of Justice (ICJ), was seised of a dispute between Guatemala and Belize by way of a special agreement. In 2008, the two States concluded an agreement to submit Guatemala's territorial, insular and maritime claim to the ICJ, which was

subsequently amended by a protocol concluded in 2015. The Parties now request the Court to determine all legal claims of Guatemala against Belize to land and insular territories and to any maritime areas pertaining to these territories, to declare the rights therein of both Parties, and to determine the boundaries between their respective territories and areas. In 1859 Britain and Guatemala signed a treaty which defined western and southern borders of Belize with Guatemala. The Treaty included an article that said both parties would make their best efforts to build a cart road from Guatemala City to the Atlantic Coast. However, the road had not been built. Guatemala said that the Treaty was a treaty of cession and because Britain violated it, they were supposed to get their land back. In 1946 Guatemala officially tried to declare the Treaty null and void. Recently Guatemala held its referendum in April of 2018 and voted to go the ICJ.

ITLOS: CASE CONCERNING THE DETENTION OF THREE UKRAINIAN NAVAL VESSELS (UKRAINE v. RUSSIAN FEDERATION), PROVISIONAL MEASURES

The International Tribunal for the Law of the Sea (ITLOS) has delivered its Order of 25 May 2019 on provisional measure request of Ukraine in respect of Case No. 26, Case concerning the detention of three Ukrainian naval vessels (Ukraine v. Russian Federation). The Tribunal held that prima facie the UNCLOS Annex VII arbitral tribunal would have jurisdiction over the submitted dispute. The Tribunal prescribed various provisional measures under Article 290(5) of UNCLOS.

The public hearing in the case was held on 10 May 2019. At the end of the hearing, Ukraine, in its final submissions, requested the Tribunal to prescribe provisional measures requiring the Russian Federation to promptly: a.) Release the Ukrainian naval vessels, the Berdyansk, the Nikopol, and the Yani Kapu, and return them to the custody of Ukraine; b.) Suspend criminal proceedings against the twenty-four detained Ukrainian servicemen and refrain from initiating new proceedings; and c.) Release the twenty-four detained Ukrainian servicemen and allow them to return to Ukraine.

While ratifying the UNCLOS, both Ukraine and the Russian Federation made declarations under article 298, paragraph 1(b), of the Convention excluding certain matters. The Tribunal therefore examined whether the present dispute was excluded by virtue of application of article 298, paragraph 1(b). The Tribunal notes that [t]he Parties disagree on the applicability of article 298, paragraph 1(b), of the Convention and their declarations under that provision. The Russian Federation maintains that the dispute submitted to the Annex VII arbitral tribunal concerns military activities and that the declarations of the Parties therefore exclude the dispute from the jurisdiction of the Annex VII arbitral tribunal. Ukraine asserts that the dispute does not concern military activities, but rather law enforcement activities, and that the declarations therefore do not exclude the present dispute from the jurisdiction of the Annex VII arbitral tribunal. In the view of the Tribunal, [t]he question to be decided is whether the dispute submitted to the Annex VII arbitral tribunal concerns military activities. The Tribunal stated that the distinction between military and law enforcement activities cannot be based solely on whether naval vessels or law enforcement vessels are employed in the activities in question, nor can this distinction be based solely on the characterization of the activities in question by the parties to a dispute. Such a distinction must be based primarily on an objective evaluation of the nature of the activities in question, taking into account the relevant circumstances in each case. The Tribunal examined three circumstances in this regard. First, it appears from the information and evidence presented by the Parties to the Tribunal that the underlying dispute leading to the arrest concerned the passage of the Ukrainian naval vessels through the Kerch Strait. The Tribunal observed that it is difficult to state in general that the passage of naval ships per se amounts to a military activity and that [u]nder the Convention, passage regimes, such as innocent or transit passage, apply to all ships. Second, the facts indicate that at the core of the dispute was the Parties' differing interpretation of the regime of passage through the Kerch Strait and that such a dispute is not military in nature. Third, it is undisputed that force was used by the Russian Federation in the process of arrest. The Tribunal stated that the context in which such force was used is of particular relevance and that what occurred appears to be the use of force in the context of a law enforcement operation rather than a military operation. The Tribunal added that the above circumstances of the incident on 25 November 2018 suggest that the arrest and detention of the Ukrainian naval vessels by the Russian Federation took place in the context of a law enforcement operation. The subsequent proceedings and charges against the servicemen further support the law enforcement nature of the activities of the Russian Federation. Based on the information and evidence available to it, the Tribunal accordingly considers that prima facie article 298, paragraph 1(b), of the Convention does not apply in the present case.

Judges Kittichaisaree and Lijnzaad appended a declaration to the Order; Judges Jesus, Lucky and Gao append a separate opinion to the Order; Judge Kolodkin appends a dissenting opinion to the Order.

(QATAR v. UNITED ARAB EMIRATES) REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES BEFORE THE ICJ

In May 2018, Qatar submitted to the ICJ a dispute under the International Convention on Elimination of All Forms of Racial Discrimination (CERD). On 11 June 2018, Qatar submitted a Request for the indication of provisional measures, referring to Article 41 of the Statute. By an Order dated 23 July 2018, the Court, after hearing the Parties, indicated the following provisional measures: (1) The United Arab Emirates must ensure that families that include a

Qatari, separated by the measures adopted by the United Arab Emirates on 5 June 2017, are reunited; (ii)Qatari students affected by the measures adopted by the United Arab Emirates on 5 June 2017 are given the opportunity to complete their education in the United Arab Emirates or to obtain their educational records if they wish to continue their studies elsewhere; and (iii) Qataris affected by the measures adopted by the United Arab Emirates on 5 June 2017 are allowed access to tribunals and other judicial organs of the United Arab Emirates; (2) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

After eighth month, on 22 March 2019, the UAE, asked for the indication of provisional measures, in order to preserve the UAE's procedural rights and prevent Qatar from further aggravating or extending the dispute between the Parties pending a final decision in the case. The UAE asked the Court to order that: (i) Qatar immediately withdraw its Communication submitted to the CERD Committee pursuant to Article 11 of the CERD on 8 March 2018 against the UAE; (ii) Qatar immediately desist from hampering the UAE's attempts to assist Qatari citizens, including by un-blocking in its territory access to the website by which Qatari citizens can apply for a permit to return to the UAE; and (iii) Qatar refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

The Court recalls that, in its Order of 23 July 2018 indicating provisional measures in the present case, it concluded that, prima facie, it has jurisdiction pursuant to Article 22 of CERD to deal with the case to the extent that the dispute between the Parties relates to the 'interpretation or application' of the said Convention (I.C.J. Reports 2018(II), p.421, para.41). The Court sees no reason to revisit its previous finding in the context of the present Request. It also decided that the alleged rights have a sufficient link with the subject of the proceedings before the Court on the merits of the case. The Court considers that the first measure requested by the UAE does not concern a plausible right under CERD. This measure rather concerns the interpretation of the compromissory clause in Article22 of CERD and the permissibility of proceedings before the CERD Committee when the Court is seised of the same matter. The Court has already examined this issue in its Provisional Order of 23 July 2018. The Court does not see any reason to depart from these views at the current stage of the proceedings in this case. Since the first two provisional measures requested do not relate to the protection of plausible rights of the UAE under CERD pending the final decision in the case, the Court considers that there is no need for it to examine the other conditions necessary for the indication of provisional measures. The Court further recalls that it has already indicated in its Order of 23July 2018 that the Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve (I.C.J. Reports2018 (II), p.434, para.79(2)). This measure remains binding on the Parties.

ICJ by fifteen votes to one, rejects the request for the indication of provisional measures submitted by the United Arab Emirates. In favour, President Yusuf; Vice-President Xue; Judges Tomka, Abraham, Bennouna, Can ado Trindade, Donoghue, Gaja, Bhandari, Robinson, Crawford, Gevorgian, Salam, Iwasawa; Judge adhoc Daudet; Against: Judge adhoc Cot.

ARMS TRADE TREATY NOT TO BE RATIFIED BY US

On 27 April 2019, US President Donald Trump announced that USA will not abide by and will never ratify Arms Trade Treaty (ATT), a UN treaty aimed at regulating global arms trade. US is of view that ATT is misguided and is encroachment on US sovereignty. It does not place any restrictions on types or quantities of arms bought, sold, or possessed by states. It also does not impact state's domestic gun control laws or other firearm ownership policies. The treaty was negotiated over a five-year period that began in the George W. Bush administration, was adopted by the U.N. General Assembly in April 2013, and was signed by then-Secretary of State John Kerry.

WITHDRAWAL BY MALAYSIA FROM ICC

After having submitted its instrument of accession to the UN Secretary General on 4 March 2019 to become member of ICC and as per Art. 126 (2) of the Rome Statute, Malaysia would have formally become a State Party on 1 June 2019. But the Malaysian Prime Minister announced on 5 April 2019 that the Malaysian government decided to 'rescind its membership of the Statute'. It was reported in the Malaysian press on 8 May 2019 that Malaysia has officially informed the Secretary General, in his capacity as depositary, of its decision to 'withdraw' from the Rome Statute. It did so after taking into consideration all necessary steps of implementation, and assumes that Malaysia will be removed from the list of State Parties.

ILO CONVENTION NO. 190 ON THE ELIMINATION OF VIOLENCE AND HARASSMENT IN THE WORLD OF WORK

On 21 June 2019, the International Labour Organization (ILO) adopted the landmark ILO Convention No. 190 (Convention concerning the Elimination of Violence and Harassment in the World of Work). The labour standards set in this Convention were negotiated over a two year period by ILO member governments, workers' representatives, and employers' organizations. The Convention provides for ILO's regular supervisory system to ensure this treaty's implementation ratifying ILO Convention No. 190, including special procedures under the ILO Constitution, such as the complaints procedure (Articles 26 to 34 of the ILO Constitution) enabling any ILO Member State to file a complaint with the ILO if it finds that any other ILO Member State is not securing effective observance of any Convention which both have ratified. Further, the ILO Governing Body can refer the complaint to a Commission of Inquiry for investigation.

If the respondent ILO Member State does not accept the recommendations of the Commission of Inquiry, the ILO can propose to refer the dispute to the International Court of Justice.

PTC II REJECTED THE REQUEST TO INVESTIGATE THE ALLEGED CRIMES AGAINST HUMANITY AND WAR CRIMES COMMITTED IN AFGHANISTAN SINCE 1 MAY 2003

On 12 April 2019, ICC Pre-Trial Chamber II unanimously rejected the request of the Prosecutor to proceed with an investigation into alleged war crimes and crimes against humanity committed in the context of the armed conflict in the Islamic Republic of Afghanistan. The judges decided that an investigation into the situation in Afghanistan at this stage would not serve the interests of justice. On 20 November 2017, the Prosecutor had requested authorisation from Pre-Trial Judges to initiate an investigation into alleged war crimes and crimes against humanity in relation to the armed conflict in the Islamic Republic of Afghanistan since 1 May 2003, as well as regarding similar crimes related to the armed conflict in Afghanistan allegedly committed in the territory of other States Parties to the Rome Statute since 1 July 2002.

UN GENERAL ASSEMBLY GIVES UK A SIX-MONTH DEADLINE TO STOP OCCUPYING INDIAN OCEAN ARCHIPELAGO

The United Nation General Assembly (UNGA) on 22 May 2019 passed a non-binding resolution asking United Kingdom (UK) to return Chagos Archipelago in Indian Ocean to Mauritius. The resolution won the support of 116 countries, while 56 abstained and only Australia, Hungary, Israel and the Maldives joined Britain and the United States in voting against it. India was among 116 nations who voted in favour of resolution. India supported draft resolution, submitted by Senegal on behalf of members of Group of African States and voted in favour of it, as Mauritius is a fellow developing nation from Africa, with which India shares age-old people-to-people bonds.

DELHI HIGH COURT: UNITED NATIONS NOT STATE UNDER ARTICLE 12

On 15 May 2019, the Delhi High court (HC) in Sanjaya Bahel v. Union of India & Others ruled that United Nations Organization (UNO) is not 'State' in terms of Article 12 of the Indian Constitution and thus it is not amenable to its jurisdiction under Article 226. Bench of Justice Suresh Kumar Kait while dismissing the petition referred to the opinion of court in M/s. Hindustan Engineering & General Mazdoor Union (Regd) & Ors. Vs. Union of India & Ors in which court had held that by no stretch of imagination an organisation of United Nations which is an international body be treated as instrumentality and or an agency of the Government. The petitioner Mr. Bahel, former UNO employee who was charged for guilty of misconduct following the findings of Procurement Task Force, was convicted by a US Federal Court and sentenced to 8 years of imprisonment and 2 years of mandatory probation, was later released and deported to India in May 2014. The petition filed by him claims that due process was not followed in his case. In November 2018, the petitioner sought permission of Union Ministry of External Affairs (MEA) to initiate a legal action against UNO under section 86 of Civil Procedure Code, 1908. This section 86 of CPC provides that a foreign State may be sued in any Court after obtained the consent of Central government in writing. The MEA then stated that consent of Union Government was not required to initiate legal suit against UNO as it was not foreign State rather only an International Organization. MEA although stated that UNO and its officials enjoyed immunity under United Nations (Privileges and Immunities) Act, 1947. It also added that as per Section 2 of Article II of the Schedule of Act, 1947, UNO enjoys immunity from every kind of legal process except insofar as in any particular case unless it has clearly waived its immunity.

SUPREME COURT OF INDIA: FOREIGNERS TRIBUNAL DECISION WILL PREVAIL OVER NRC

The Supreme Court of India (SC), on 17 May 2019, has held that a Foreigner Tribunal's order declaring a person as an illegal foreigner will be binding and will prevail over government decision to include or exclude name from National Register of Citizens (NRC) in Assam. A bench of Chief Justice Ranjan Gogoi and Justices Deepak Gupta and Sanjiv Khanna was dealing with the question that if the name of a person, included in the NRC in Assam is deleted on the ground that he was a foreigner, then he should have a right of appeal before an appropriate forum against exclusion or dropping of his name. As per SC, the persons whose names are not included in NRC in Assam can produce documents including those related to their family tree and thus seek review of tribunal's decision. As per SC, it cannot create an appellate forum for those, declared as illegal foreigners by the foreigners tribunal, by using its power under Article 142 of Indian Constitution.

JOINT MEETINGS OF BASEL, STOCKHOLM AND ROTTERDAM CONVENTIONS HELD IN GENEVA

The joint meetings of three conventions on chemicals and waste that is the fourteenth meeting of the Conference of the Parties (COP) to Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal (COP 14) was held along with the ninth meeting of the COP to Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the ninth meeting of the COP to Stockholm Convention on Persistent Organic Pollutants. The theme of the meetings this year was Clean Planet, Healthy People: Sound Management of Chemicals and Waste. An Indian delegation consisting representatives of Ministry of Environment, Forest and Climate Change, and other ministries of Agriculture, Chemicals, and Electronics and Information Technology participated in the meeting held in Geneva, Switzerland, from 29 April to 10 May 2019. In Basel Convention, two important issues were discussed and decided, i.e. technical guidelines on e-waste and inclusion of plastic waste in the Prior Informed Consent (PIC) procedure. The

draft technical guidelines stipulated the conditions when used electrical and electronic equipment destined for direct reuse, repair, refurbishment or failure analysis should be considered as non-waste. India had major reservations regarding these provisions as in the name of re-use, repair, refurbishment and failure analysis there was a possibility of dumping from the developed world to the developing countries including India in view of the growing consumption of electronic equipment and waste across the world. The Indian delegation strongly objected the proposed decision on these guidelines during plenary and did not allow it to be passed by the conference of the parties (COP). Many rounds of multilateral and bilateral negotiations were held under the aegis of the Convention Secretariat in order to address India's concerns which were supported by a large number of other developing countries. On the final day of the COP, a modified decision was adopted in which all the concerns raised by India were incorporated. These were: dumping of e-waste in developing countries; recognition that the interim guideline has issues and further work is required specially on the provision on distinguishing waste from non-waste; the guidelines were adopted on an interim basis only; the tenure of the expert working group was extended to address the concerns raised by India; and the usage of interim guidelines to be done only on a pilot basis. Under the Basel Convention, another major achievement of COP 14 was the decision to amend the convention to include unsorted, mixed and contaminated plastic waste under PIC procedure and improve the regulation of its transboundary movement. Further, Basel Convention has also adopted partnership on plastic which was welcomed by the Indian delegation. These steps will help prevent the illegal dumping of plastic wastes in developing countries. India has already imposed a complete prohibition of import of solid plastic waste into the country. India has also made an international commitment to phase-out single-use plastic. India fully supported this exercise and one of the members of the Indian delegation was co-chair in the contact group which negotiated this agreement for amendment in the annexes of Basel Convention to bring plastic waste under PIC procedure. Under the Stockholm Convention the COP decided to list Dicofol in Annex A without any exemption. The PFOA was also listed with some exemptions in the Annex A of the Stockholm Convention. Under the Rotterdam Convention, two new chemicals (Phorate and HBCD) were added in the list for mandatory PIC procedure in international trade.

HON'BLE JUSTICE MADAN B. LOKUR APPOINTED JUDGE OF SUPREME COURT OF FIJI

The former judge of Indian Supreme Court Hon'ble Justice Madan B Lokur has been appointed to the Supreme Court of Fiji. Hon'ble Justice Lokur is appointed as a judge of Supreme Court of Fiji's non-resident panel. He will assume charge of his new role on 15 August 2019. He has been appointed in new role for a period of three years. In a year, the Supreme Court of Fiji, has three sessions in total. Justice Lokur will attend August session which starts from August 15 to August 30, 2019. Other countries that have been invited by Fiji over the years are South Africa, Sri Lanka, Australia, Malaysia, Singapore and New Zealand.

INDIA ABSTAINS FROM VOTING ON TORTURE GOODS

On 28 June 2019, India has abstained from voting on United Nation General Assembly (UNGA's) resolution aimed at examining options to end trade in goods which are used for capital punishment and torture. India stated that it is unacceptable to place death penalty on par with torture that it firmly believed that freedom from torture is a human right which must be respected and protected under all circumstances. UN General Assembly adopted resolution on-

Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards. The resolution was adopted by 193 member Assembly with a recorded vote of 81 in favour, 20 against, and 44 abstentions. India argued that incorporating capital punishment into scope of this resolution raised concerns about making an attempt to place it on par with torture. India stressed that the country remains firmly committed to prevent torture and other such punishment (like cruel, inhuman and degrading treatment). India stated that where capital punishment is statutorily provided for, due process of law is followed. It cautioned that it may even start a duplicative parallel process related to goods being used for torture and capital punishment and that it will further create ambiguity by conflating different issues. In India, capital punishment is a statutory provision, but at the same time it is used in rarest of rare cases. Also, acts of torture are punishable in India under various provisions of the Indian Penal Code (IPC) and Indian judicial system serves as a bulwark against any such violations of human rights.

COUNCIL OF EUROPE RESTORED VOTING RIGHTS OF RUSSIA

Parliamentary Assembly of the Council of Europe at Strasbourg (France), on 24 June 2019, has voted in favour of restoring Russia's voting rights, 5 years after they were revoked over its illegal annexation of Crimean Peninsula. In 2014 following Russia's annexation of Crimea, Russia was stripped of its voting rights. Russia then responded by boycotting assembly and since 2017 the country also refused to pay its share of 33 million Euro to human rights watchdog. Recently, Russia had also threatened the assembly of quitting the body altogether if it is not allowed to take part in election of a new Secretary General to body. The Parliamentary assembly voted with 118 in favour and 62 against, and 10 abstentions. The voting was undertaken despite strong opposition from Ukraine. This move now paves the way for Russia to participate in election of a new secretary general for pan-European rights body.

US WITHDRAWS INDIA'S GSP BENEFITS

The United States of America terminated

India's designation as a beneficiary developing nation under the GSP (Generalized System of Preference) trade program w.e.f. 5 June 2019. The step was taken on determining that India has not committed to provide equitable and reasonable access to its markets for the US. Under the US's oldest preferential trade scheme called GSP, India is the largest beneficiary nation and exported goods worth $6.35 billion under the scheme in 2018. The US cited reasons are trade imbalance with India, no access to Indian market for US dairy, medical device industry and issues related to data localisation norms. The GSP are unilateral, non-reciprocal and non-discriminatory benefits extended by some developed nations to developing countries. GSP was instituted on 1 January 1976, by Trade Act of 1974. The GSP programme has effective dates which are specified in relevant legislation thus in order to remain in effect it requires periodical reauthorization. The U.S. designed trade programme seeks to promote economic growth in developing countries by providing preferential duty-free entry for up to 4,800 products from 129 designated beneficiary countries and territories. As per US norms, to qualify for GSP a beneficiary nation must meet 15 discretionary and mandatory eligibility criteria established by US Congress which include providing US with equitable and reasonable market access, respecting mutual and internationally recognised worker rights, working for combating child labour and providing adequate and effective intellectual property rights (IPR) protection.

WTO PANEL REPORT: RUSSIA - MEASURES CONCERNING TRAFFIC IN TRANSIT

Ukraine's challenged the legality of Russian measures with respect to rail transit and road routes across the Ukraine-Russia border for all traffic in transit destined for Kazahkstan, as well as other countries such as the Kyrgyz Republic, Mongolia, Tajikistan, Turkmenistan, Uzbekistan, and Belarus. Russia argued that the measures are among those that Russia considers necessary for the protection of its essential security interests, which it took, in response to the emergency in international relations that occurred in 2014 that presented threats to the Russian Federation's essential security interests, invoking Article XXI(b)(iii) of the GATT 1994, arguing that, as a result, the Panel lacks jurisdiction to further address the matter. Russia took the position that the explicit wording of GATT Article XXI confers sole discretion on the Member invoking this Article to determine the necessity, form, design, and structure of the measures taken pursuant to Article XXI, cautioning that involving the WTO in political and security matters will upset the very delicate balance of rights and obligations under the WTO Agreements and endanger the multilateral trading system. Russia did not present substantive evidence to meet Ukraine's claims on the merits, but instead focused on its jurisdictional objection. Ukraine argued that Members invoking this provision did not have total discretion, and thus, a panel's objective assessment must include an examination of whether a Member invoking Article XXI has done so in good faith. Unilateral determinations of the applicability of GATT Article XXI, in Ukraine's view, would also be contrary to Article 23.1 of the DSU. Third parties Australia, Brazil, Canada, the European Union, Moldova, favoured the justiciability or reviewability of GATT Article XXI, albeit for different reasons. Japan urged extreme caution and ultimately proposed a deference approach for panels with respect to Members' invocation of GATT Article XXI. Similarly Singapore proposed for a margin of appreciation approach. Turkey put forward a two-tiered analytical approach requiring the complaining Member to first establish a prima facie case of inconsistency before the responding Member has to substantiate its GATT Article XXI justification. The United States sided with Russia's position that GATT Article XXI is self-judging.

The Panel, on 5 April 2019, founded that Russia's invocation of the security exception under GATT Article XXI specifically item b(iii): Nothing in this Agreement shall be construed to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests taken in time of war or other emergency in international relations fell well within its terms of reference for purposes of the Article 1.1 of the Dispute Settlement Understanding (DSU). The Panel broke down the interpretation of this sentence as follows: The phrase which it considers was not intended to make GATT Article XXI subject to a Member's unilateral determination, otherwise the items under GATT Article XXI(b) would be considered effet utile; The phrase taken in time of, according to the Panel, describes the connection between the action and the events of war or other emergency in international relations in that subparagraph. The Panel understands this phrase to require that the action be taken during the war or other emergency in international relations. This chronological concurrence is also an objective fact, amenable to objective determination. The circumstances referred to in item (iii), namely, war or other emergency in international relations, was in the Panel's view clearly capable of objective determination. Consequently, the Panel is satisfied that the situation between Ukraine and Russia since 2014 constitutes an emergency in international relations, within the meaning of subparagraph (iii) of Article XXI(b)of the GATT 1994. On its examination of the facts before it, the Panel then upheld Russia's invocation of GATT Article XXI. Professor Georges Abi-Saab was the Chairperson of the Panel. On 26 April 2019, the DSB adopted the Panel Report.

FORTHCOMING EVENTS

Inauguration and Convocation of the P G Diploma Courses of the ISIL, 2 September 2019

19th Henry Dunant Memorial Moot Court Competition 2019, 19 - 22 September 2019