



# The Indian Society of International Law

## NEWSLETTER

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For members only

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### Editorial



Climate Change poses an existential threat to mankind, which keeps international community, particularly the Parties to the UNFCCC continuously engaged through the annual Conference of the Parties (COP) meeting to the United Nations Framework Convention on Climate Change (UNFCCC). The ultimate goal of the climate change negotiations is the stabilization of the climate system, which is pegged at restricting the average global temperature at 2 degree Celsius as compared to pre-industrial levels.

The 20th Conference of the Parties meeting (COP 20) to the UNFCCC convened in Lima, Peru, from 1-14 December 2014. It was meant to work upon the mandate of the COP 19 in Warsaw, which says that the Parties to the UNFCCC should send their "Intended

Nationally Determined Contributions" (INDCs) that will serve the material to the COP21. The COP 21 is to be held at the end of this year in Paris, to produce the 2015 climate change agreement. The Parties INDC information has to be in such a manner that facilitates "the clarity, transparency, and understanding; of the intended contributions. The question that drew attention of the Parties to the UNFCCC, particularly developing country parties, whether the INDCs would include only mitigation or all the major components of the UNFCCC, i.e., adaptation, finance and transfer of technology. Developed countries wanted INDCs to focus only on mitigation, while many developing countries pushed to include adaptation and finance too. The compromise does not explicitly define the scope of INDCs. In linking the INDCs to the Convention's ultimate objective (stabilizing greenhouse gas concentrations to avoid dangerous anthropogenic interference with the climate system), the decision sets an expectation of mitigation contributions from all. It also invites parties to "consider including an adaptation component" as well. In addition, the Parties are supposed to provide quantifiable information relating to INDCs' timeframe, scope and coverage, and the assumptions and methodologies used in estimating and accounting for emissions with reference to the INDCs.

Developed countries wanted to scrutinize one another's INDCs pre-Paris (also called ex-ante assessment) in terms of its adequacy to stabilize the climate system. Major developing countries opposed it. It was replaced with the idea that the Climate Change secretariat will produce the synthesis report that will clarify the adequacy of the proposed efforts to stabilize the climate system.

The Lima climate change conference featured the first-ever multilateral assessment of mitigation efforts by developed countries, part of a new set of transparency procedures established under the 2010 Cancun Agreements. Seventeen developed country parties, including the United States, the European Union, several EU members states, and New Zealand, provided brief presentations to the Subsidiary Body on Implementation (SBI) on progress towards achieving their 2020 emission pledges, and fielded questions from other parties.

Developing countries pushed the idea of differentiation between Annex I Parties and non-Annex I Parties. But it was flatly rejected by the developed countries. The principle of the negotiations was changed. The Principle is common but differentiated responsibilities and respective capabilities, in light of different national circumstances.

The Lima Conference is notable for the modest progress made by the developed countries by having mobilized 10.3 Billion USD towards their target of mobilizing 100 Billion USD by the end of 2020.

The Lima Conference while opposing any differentiation between developed and developing country parties sends a signal that we owe a duty to the international community to protect climate system or erga omnes obligation.

**Dr. E. M. Sudarsana Natchiappan**

## RECENT ACTIVITIES



### THE 4<sup>TH</sup> BIENNIAL CONFERENCE OF ASIAN SOCIETY OF INTERNATIONAL LAW ON ASIA AND INTERNATIONAL LAW IN THE TWENTY FIRST CENTURY ON 14<sup>TH</sup> TO 16<sup>TH</sup> NOVEMBER, 2014

The Indian Society of International Law (ISIL) and the Asian Society of International Law (AsianSIL) jointly organized the 4<sup>th</sup> Biennial Conference of Asian Society of International Law on *Asia and International Law in the Twenty First Century* from 14<sup>th</sup> to 16<sup>th</sup> November, 2014. The Conference, held at the India Habitat Centre, was inaugurated by Hon'ble Dr. M. Hamid Ansari, Vice President of India. Inaugural Session was also addressed by Judge Xue Hanqin, International Court of Justice, The Hague. Dr. E. M. S. Natchiappan, President, ISIL and Prof. V. S. Mani,

President, ASIL also spoke on this occasion. Mr. Narinder Singh, Secretary General, ISIL proposed a formal vote of thanks.

The three day conference, other than the inaugural session, was divided into three Plenary Sessions and 25 parallel sessions. Final Plenary (Closing) Session was presided by Hon'ble Justice Madan B. Lokur, Judge, Supreme Court of India. The Closing Session was also addressed by Professor Onuma Yasuaki, Meiji University and Professor Simon Chesterman, Secretary-General, Asian



Society of International Law (AsianSIL). Around 100 papers were presented on various themes identified for the Conference. 450 Indian and 70 foreign delegates attended the Conference. Many eminent judges, distinguished international law scholars and lawyers from various countries attended the Conference. The Conference was supported by international and national institutions.

A Student Workshop, in pursuance of the 4<sup>th</sup> Biennial Conference of the Asian Society of International Law on *Research in International Law* was organized on 13<sup>th</sup> November, 2014 at the ISIL premises. The Workshop was inaugurated by Professor Laurence Boisson de Chazournes, President, European Society of International Law (ESIL). Around 40 papers were presented in the three parallel sessions held at ISIL premises on 13<sup>th</sup> November, 2014. Dr. Luther Rangreji, EC Member and Associate Professor, SAU, New Delhi was co-ordinator of the Student Workshop.

### INDIAN JOURNAL OF INTERNATIONAL LAW

The Journal will be published with the Springer Publisher. IJIL will also be made available in electronic form and will be available on electronic database and will thus reach a wider audience.

## RECENT ACTIVITIES



### 14<sup>TH</sup> HENRY DUNANT MEMORIAL MOOT COURT COMPETITION 2014

For the first time, the Moot Court was conducted in Zonal Rounds. The two zones for the 2014 Henry Dunant Memorial Moot Competition are North Zone and South Zone. The division of States for the two Zones are as follows –North Zone (Arunachal Pradesh, Assam, Bihar, Chattisgarh, Delhi, Gujarat, Haryana, Himachal, Jammu & Kashmir, Jharkhand, MP, Manipur, Meghalaya, Nagaland, Punjab, Rajasthan, Sikkim, Tripura, Uttar Pradesh, West Bengal) and South Zone (Andhra Pradesh, Goa, Karnataka, Maharashtra, Orissa, Pondicherry, Tamil Nadu).

NIRMA University, Ahmadabad, conducted North Zone Round of the Competition from 1<sup>st</sup> to 3<sup>rd</sup> August, 2014, in which 24 teams participated.

Faculty of Law, Madras University conducted South Zone Round of the Competition from 18<sup>th</sup> to 20<sup>th</sup> July, 2014, in which 11 teams participated. Total 35 teams participated in the Competition. Top eight teams qualified for the National Round of the Competition, which was held at the Indian Society of International Law, New Delhi from 16<sup>th</sup> to 18<sup>th</sup> August, 2014. The List of top 8 teams from the North and South Zone Qualifying Rounds are mentioned below – (RMLNLU, Lucknow, NLIU, Bhopal, O. P. Jindal Global University, Sonapat, National Law University, Jodhpur, UPES, Dehradun, UILS, Chandigarh, Amity, Noida, GNLU, Gandhinagar, National Law School (NLS), Bangalore, NALSAR, Hyderabad, NUALS, Kochi, Kerala Law Academy (KLA), Trivandrum, SOEL, Chennai, Government Law College (GLC), Mumbai, National Law University,

Bhubaneswar, Pravin Gandhi College of Law, Mumbai),

The National Round of the 14<sup>th</sup> Henry Dunant Moot Court Competition are jointly organized by the ISIL and the International Committee of the Red Cross (ICRC), New Delhi from 16<sup>th</sup> to 17<sup>th</sup> August, 2014. The Competition was inaugurated by Hon'ble Justice Madan B. Lokur, Judge, Supreme Court of India. The Competition was conducted in three stages, quarter-final, semi-final and final rounds. The participants were judged on the basis of written memorials, appreciation of facts and law, advocacy skills, use of authorities and citations, general impression and court manners.

Eminent professors, legal officers and international law scholars judged the teams in quarter-final and semi-final rounds. Prof. V. S. Mani, Director, School of Law and Governance, Jaipur National University, Jaipur, Dr. Nerru Chadha, Joint Secretary, L&T Division, MEA, Government of India and Prof. (Dr.) Rahmat Bin Mohammad, Secretary General, AALCO were the final round judges. *National Law University, Jodhpur and Ram Manohar National Law University, Lucknow* were the winner and runner up of the Competition respectively. *Siny Sara Varghese, Kerala Law Academy Law College, Trivandrum, Kerala* was adjudged the Best Advocate, *Ishan Mehta, National Law University, Orissa, Cuttack* won

## RECENT ACTIVITIES

the Best Researcher award, and *Dr. Ram Manohar Lohia National Law University, Lucknow* won Best Memorial award in this Competition. Prof. V. S. Mani gave the valedictory address on the occasion.

### **SPECIAL LECTURE ON “RIGHT TO EDUCATION AS A HUMAN RIGHT: CHALLENGES AND PROSPECTS”**

ISIL organised a Special lecture on “Right to Education as a Human Right: Challenges and Prospects” on 2<sup>nd</sup> September, 2014. The lecture was delivered by Dr. Kishore Singh, UN Special Rapporteur on the Right to Education. The lecture witnessed lively discussion.

### **SPECIAL LECTURE ON “PEACE, SECURITY, AND JUSTICE: A LEIDEN UNIVERSITY APPROACH”**

A Special lecture was organized on “Peace, Security and Justice: A Leiden University Approach” on 2<sup>nd</sup> September, 2014. The lecture was delivered by Dr. Mark Dechesne, Associate Professor at Leiden University, Campus The Hague. The lecture witnessed lively discussion.

### **AN INDO-GERMAN JUDGES DIALOGUE ON JUDICIAL SYSTEM- “NATIONAL LAWS IN A GLOBALIZED WORLD” AMONG INDIAN JUDGES AND**

### **VISITING GERMAN JUDGES**

ISIL and Konrad Adenauer Foundation jointly organized an Indo-German Judge Dialogue on Judicial System on 2<sup>nd</sup> August, 2014 at Imperial Hotel, New Delhi. Prof. Dr. H.C. Rudolf Mellinghoff, Chief Justice, Federal Finance Court and Dr. E. M. S. Natchiappan, President, ISIL introduced the German and Indian delegation respectively. The theme for Judicial Dialogue was *National Law in a Globalized World*. Identified themes of the Dialogue were “the Role of A Constitutional Court in a Democracy”, “Legal Systems of India and Germany-An Overview”, “Appellate Structures and Development of Law”, and “Court as Mediators for Societal Conflicts”. Following eminent jurists participated (Presided by: Hon'ble Justice Vikramajit Sen, Judge, Supreme Court of India; Prof. Dr. Jur. Michael Eichenberger, Sitting Judge, Federal Constitutional Court; Hon'ble Justice S. Ravindra Bhat, Judge, Delhi High Court; Shri A. K. Ganguly, Senior Advocate, Supreme Court of India; Shri P. H. Parikh, Senior Advocate, Supreme Court of India; Prof. Dr. H.C. Rudolf Mellinghoff, Chief Justice, Federal Finance Court; Shri Sanjay Parikh, Senior Advocate, Supreme Court of India; Dr. V. G. Hegde, Treasurer, ISIL; Shri Vivek Dhokalia, Practicing Lawyer in IPR and EC Member, ISIL; Hon'ble Justice Manju Goel, Judicial Member, Appellate

Tribunal; Hon'ble Shri Sudhir Kumar, Member, CAT; Hon'ble Shri Amit Shukla, Judicial Member, Income Tax Appellate Tribunal; Dr. Henning Radtke, Sitting Judge, Federal Court of Justice; Dr. M. Gandhi, Professor, Jindal Global University, Sonapat, Hon'ble Shri C. K. Chaturvedi, Member, New Delhi District Consumer Disputes Redressal Forum.

### **PREPARATORY COMMITTEE MEETING OF THE WORLD CONGRESS ON INTERNATIONAL LAW**

A preparatory Committee of the World Congress on International Law was organized by the ISIL on 13<sup>th</sup> September, 2014 at Imperial Hotel. Hon'ble Justice Dalveer Bhandari, Judge, International Court of Justice, The Hague presided the meeting. The meeting was attended by heads of the Embassies and various international institutions and universities. The meeting was aimed to extend invitations of the World Congress on International Law throughout the world including State Representatives, Legal Officers of various countries, Legal Advisors of various international institutions and academicians. The meeting was attended by 50 interlocutors of the ISIL.

### **TWO DAY SEMINAR ON**

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## **INTERNATIONAL CRIMINAL LAW**

Two day seminar on International Criminal Law was jointly organized by the ISIL, Embassy of EU Delegation, Peking University, AALCO and O. P. Jindal University from 28<sup>th</sup> to 29<sup>th</sup> October, 2014 at the Imperial Hotel, New Delhi. The Seminar was presided by Dr. E. M. S. Natchiappan, President, ISIL and Inaugural Lecture was delivered by Prof. Claus Kreß, Professor for Criminal Law and Public International Law and Director of the Institute of International Peace and Security Law as well as Chair for German and International Criminal Law at the University of Cologne. His Excellency João Cravinho, Ambassador of the European Union gave a formal vote of thanks. On this occasion, a Dinner Reception was hosted by the EU Embassy at Imperial Hotel, New Delhi.

## **13<sup>TH</sup> SUMMER COURSE ON INTERNATIONAL LAW**

The ISIL organized its 13<sup>th</sup> Summer Course on International Law at its premises from 26<sup>th</sup> May to 6<sup>th</sup> June, 2014. The Course received a response of 175 participants from many parts of the country. The Summer Course was intended to introduce all branches of international law and highlight contemporary issues to the participants. The Course

was inaugurated by Prof. B. S. Chimni on 26<sup>th</sup> May, 2014. Prof. Chimni said, "I am happy to see so many of you have chosen to participate in the 13<sup>th</sup> 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 was 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 faculty for the Summer Course comprised of eminent international law experts. The Course witnessed lively interactions and discussion by the participants.

## **TWO DAY TRAINING WORKSHOP ON INTELLECTUAL PROPERTY RIGHT AND WTO ACCOUNTABILITY –SCOPE OF**

## **PATENTING FOR INDIAN FOREST SERVICE OFFICERS**

Two-day Training Workshop on Intellectual Property Right and WTO Accountability – Scope of Patenting for Indian Forest Service Officers was held on the 20<sup>th</sup> and 21<sup>st</sup> November, 2014. ISIL undertook following themes for discussion in the Programme: 1. International and National Patent Laws; 2. India-Scope of Patent; 3. Forest, TRIPS, Convention on Biological Diversity and Traditional Knowledge; and 4. Procedure of Patent. There were lectures and presentations on the above mentioned themes. The faculty of the training course consisted of eminent international law scholars. 20 IFS Officers participated in the Training Workshop.

## **INDUCTION LEVEL TRAINING PROGRAMME FOR THE GRADE IV OFFICERS OF THE INDIAN ECONOMIC SERVICE**

An Induction Level Training Programme for Indian Economic Services on International and National Economic Law sponsored by the Ministry of Finance, Government of India was conducted by the ISIL at its premises from 20<sup>th</sup> October to 25<sup>th</sup> October, 2014. 24 IES Officers participated in the course. There were lectures and presentations on a variety of themes of international and

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national economic law. The faculty of the orientation course consisted of eminent international law scholars.

## **CONVOCATION AND INAUGURATION OF P. G. DIPLOMA COURSES OF THE INDIAN ACADEMY OF INTERNATIONAL LAW AND DIPLOMACY, ISIL, NEW DELHI**

ISIL organized the Convocation for awarding of Post Graduate Diploma Certificates on 1<sup>st</sup> September, 2014. The ceremony was also marked to inaugurate the Post Graduate Diploma Courses 2014 conducted by the Indian Academy of International Law and Diplomacy, a teaching wing of the Indian Society of International Law. Dr. E. M. S. Natchiappan, President, ISIL welcomed and introduced the chief guest Hon'ble Justice Gita Mittal, Judge, Delhi High Court to deliver the inaugural address. Mr. Sudhanshu Roy received V. K. Krishna Menon Memorial Prize for securing the highest marks in the Post Graduate Diploma Course in International Law and Diplomacy; Mr. Rohit Asthana received K. Krishna Rao Memorial Prize for securing the highest marks in the Post Graduate Diploma Course in International Trade and Business Law; Ms. Madhumita Kothari received Judge Nagendra Singh Memorial Prize for securing the highest marks

in the Post Graduate Diploma Course in Human Rights, International Humanitarian and Refugee Law; Ms. Mansi Mantoo received M. K. Nawaz Memorial Prize in the Post Graduate Diploma Course on Intellectual Property Rights Law; and Ms. Smita Raut, secured highest marks in the P G Diploma Course on International Environmental Law.

## **MONTHLY DISCUSSION FORUM**

**Monthly discussions were organized on the following topics:**

“Use of Public Moral Exception in WTO Law: Discussion of EC-Seals Dispute” on 8<sup>th</sup> August, 2014: James J Nedumpara, Associate Professor of International Trade and Economic Laws at the Jindal Global Law School

“The Gaza Conflict from a Humanitarian Law Perspective”, on 5<sup>th</sup> September, 2014: Charles Sabga, Regional Legal Adviser for South Asia and Iran.

“India's Quest for Permanent Membership in the United Nations Security Council”, on 7<sup>th</sup> November, 2014: Prof. C. S. R. Murthy, Prof. at the Centre for International Politics, Organization and Disarmament, at JNU

“WTO, Trade Facilitation Agreement; Food Security and India”, on 5<sup>th</sup> December, 2014: Professor A. K. Koul, Former Vice-Chancellor National University of Research and Study in Law.

## **RECENT DEVELOPMENTS**

### **GENERAL ASSEMBLY DECIDES TO REFER UN REPORT ON HUMAN RIGHTS IN DPR KOREA TO SECURITY COUNCIL**

Mr. Marzuki Darusman, Special Rapporteur on the situation of Human Rights in the DPRK, a United Nations human rights expert called on the General Assembly, on 28<sup>th</sup> October, 2014 to refer a UN-mandated report documenting wide-ranging and ongoing crimes against humanity in the Democratic People's Republic of Korea (DPRK) to the International Criminal Court (ICC). Presenting his latest report to the General Assembly committee dealing with human rights issues (Third Committee), Marzuki Darusman, further urged the General Assembly to submit the report to the Security Council. Further, he said that the UN system, as a whole, should follow up the Commission of Inquiry's report in a “coordinated and unified way,” as envisaged in the Human Rights up Front initiative, which seeks to prevent genocide and human rights violations. Mr. Darusman believes that this would send an unequivocal signal that the international community is determined to take the follow up to the work of the commission of inquiry on the DPRK to a new level. The 400-page report was released in February 2015 by the

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UN Commission of Inquiry on human rights in the DPRK, which was established by the Human Rights Council in March 2013. Documenting in great detail the rights violations committed in the country, the report called for urgent action to address the human rights situation, including referral to the ICC. During his presentation, Mr. Darusman also asked the General Assembly to request that the DPRK grant access to the UN human rights mechanisms to assist, assess and verify the implementation of the recommendations.

Subsequently, the United Nations General Assembly, on 18 December 2014 condemned “ongoing systematic, widespread and gross violations of human rights” in the Democratic People's Republic of Korea (DPRK), adopting a resolution by which it would transmit a UN-backed report probing such violations to the Security Council. The resolution adopted, on 18<sup>th</sup> December, 2014 by the General Assembly, acting on the recommendations of its Third Committee (the Assembly's main body dealing with social, humanitarian and cultural issues) commends the work of the Special Rapporteur on human rights in the DPRK and the Commission of Inquiry and decides that the commission's

report should be submitted to the Security Council. The Assembly encourages Council members to take appropriate action to ensure accountability, including consideration of referral of the situation to the ICC and of targeted sanctions against those appearing most responsible for crimes against humanity.

The Assembly resolution lists examples of torture and cruel, inhuman or degrading treatment or punishment, describes a system of political prison camps, the forcible transfer of populations and limitations on movement, as well as violations of rights fundamental freedoms of women, children, and persons with disabilities. The Assembly expressed its concern that the DPRK Government refuses to recognize the Special Rapporteur's mandate or to cooperate, continuing not to acknowledge the grave human rights situation in the country, and failing to prosecute those responsible for violations, including those that may amount to crimes against humanity. Strongly urging the Government of the DPRK to respect human rights and fundamental freedoms, it urges implementation of the commission's recommendations without delay. It also welcomes the recent willingness expressed by the Government to consider human rights dialogues, technical cooperation with the Office of the United Nations High Commissioner

for Human Rights and a country visit of the Special Rapporteur.

## **NEED FOR TREATY ON PRIVATE SECURITY – UN EXPERTS**

The United Nations working group on the use of mercenaries, on 27<sup>th</sup> October, 2014, appealed for stronger global regulations for private security, saying conviction of Blackwater contractors shows the need for all private security personnel to be held accountable for international human rights and humanitarian law violations. Ms. Patricia Arias, currently heading the five member group of independent human rights experts took note of the fact that prosecutions were finally brought, putting an end to the cycle of impunity that prevailed since 2007 and aggravated the suffering of victims and their families. However, such examples of accountability are the exception rather than the rule. Ms. Arias highlighted the difficulty in bringing a prosecution in this case shows the need for an international treaty to address the increasingly significant role that private military companies play in transnational conflicts. The expert body's appeal comes seven years after the killing of 17 Iraqi civilians, including children, by Blackwater personnel in Baghdad's Nissour Square. On 22<sup>nd</sup>

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October, 2014, four Blackwater contractors involved in the killings were prosecuted and convicted of manslaughter and murder by U.S. federal jury.

Given the transnational nature of many private military and security companies' activities and the flexible corporate structures in the industry, Ms. Arias' group has advocated for the international community to reach some consensus on the minimum standards of regulation of private military and security companies.

The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination was established in 2005 by the then Commission on Human Rights. It is composed of five independent experts serving in their personal capacities: Ms. Patricia Arias (Chairperson-Rapporteur, Chile), Mr. Anton Katz (South Africa), Mr. Gabor Rona (United States/Hungary), Ms. Elzbieta Karska (Poland) and Mr. Saeed Mokbil (Yemen).

### **UN PANEL PAYS OUT OVER \$1 BILLION IN REPARATIONS FOR IRAQ'S INVASION OF KUWAIT**

The United Nations Compensation Commission (UNCC), which settles the damage claims of those who suffered losses in the 1990 Iraqi

invasion of Kuwait, on 23<sup>rd</sup> October, 2014 made \$1.06 Billion available to the Government of Kuwait. With this payment, the total amount in compensation received by the Government of Kuwait now amounts to \$47.8 billion, leaving approximately \$4.6 billion remaining to be paid. The UNCC's Governing Council has identified six categories of claims: four are for individuals' claims, one for corporations and one for governments and international organizations, which also includes claims for environmental damage. This category E claim was submitted by the Government of Kuwait on behalf of the Kuwait Petroleum Corporation and awarded \$14.7 billion in 2000 for oil production and sales losses as a result of damages to Kuwait's oil field assets. Successful claims are paid monies drawn from the UN Compensation Fund, which is financed by a percentage of the proceeds generated by the export sales of Iraqi petroleum and related products. The Commission was established in 1991 as a subsidiary organ of the UN Security Council. It has received nearly three million claims, including those of nearly 100 governments for damages to their nationals or their corporations for losses and damages incurred as a direct result of Iraq's invasion and occupation of Kuwait from 2<sup>nd</sup> August, 1990 to 2<sup>nd</sup> March, 1991. The Government of Kuwait's claim

represents the largest award by the Commission.

### **FORENSIC SERVICES MUST BE INDEPENDENT FROM LAW ENFORCEMENT – UN SPECIAL RAPPORTEUR ON TORTURE**

To be effective, an investigation into torture must be prompt, impartial, independent and thorough, but that seems to be the exception in many countries, where forensic services are closely linked with law enforcement agencies, the United Nations Special Rapporteur on Torture told the General Assembly. Presenting his latest report to the Assembly's main body dealing with social, humanitarian, and cultural issues (Third Committee), Juan E. Méndez noted on 21<sup>st</sup> October, 2014, the conflict of interest out of fear of jeopardizing their employment or other reprisals. If medical staffs, including forensic doctors, serve under law enforcement or security agencies or the prison sector, they may have conflicted loyalty between their employer and their professional obligation to report torture or ill-treatment. In his report, the human rights expert urges Governments to undertake effective investigations whenever there are indications of torture or other ill-treatment, even without an express or formal complaint.



# RECENT DEVELOPMENTS

## GENERAL ASSEMBLY ELECTS 15 MEMBERS TO UN HUMAN RIGHTS COUNCIL

The UN General Assembly, on 21<sup>st</sup> October, 2014, elected 15 countries to serve on the United Nations Human Rights Council for a period of three years beginning on 1<sup>st</sup> January, 2015. In one round of secret balloting at UN Headquarters in New York, the Assembly elected Albania, Bangladesh, El Salvador, Ghana, Latvia, Netherlands, Nigeria, Paraguay, Portugal and Qatar.

Bolivia, Botswana, Congo, India and Indonesia, whose terms were due to expire at the end of this year, were re-elected on 21<sup>st</sup> October, 2014.

Members of the Council serve for a period of three years and are not eligible for immediate re-election after serving two consecutive terms. The distribution of seats for the current election was as follows: 4 seats allotted to the African States Group; 4 for the AsiaPacific Group; 2 for the Eastern European Group; 3 for the Latin American and Caribbean Group; and 2 for the Western European and Other States Group.

The Councils' outgoing members are: Austria, Benin, Burkina Faso, Chile, Costa Rica, Czech Republic, Kuwait, Peru Philippines and Romania. Those elected, on 21<sup>st</sup> October, 2014, will be joining in the following States who will remain on the Council: Algeria (2016);

Argentina (2015); Brazil (2015); China (2016); Côte d'Ivoire (2015); Cuba (2016); Estonia (2015); Ethiopia (2015); France (2016); Gabon (2015); Germany (2015); Ireland (2015); Japan (2015); Kazakhstan (2015); Kenya (2015); Maldives (2016); Mexico (2016); Montenegro (2015); Morocco (2016); Namibia (2016); Pakistan (2015); Republic of Korea (2015); Russia (2016); Saud Arabia (2016); Sierra Leone (2015); South Africa (2016); the former Yugoslav Republic of Macedonia (2016); United Arab Emirates (2015); United Kingdom (2016); United States (2015); Venezuela (2015); and Vietnam (2016)

## ANGOLA, MALAYSIA, NEW ZEALAND, SPAIN AND VENEZUELA ELECTED TO SERVE ON UN SECURITY COUNCIL

In three rounds of voting the United Nations General Assembly, on 16<sup>th</sup> October, 2014, elected Angola, Malaysia, New Zealand, Spain and Venezuela to serve as non-permanent members on the Security Council for two-year terms beginning on 1<sup>st</sup> January, 2015. The new members will serve on the Council until 31<sup>st</sup> December, 2016. Angola Malaysia, Venezuela and New Zealand were elected in the first vote. The Assembly then held two rounds of restricted balloting to elect Spain to fill the remaining seat on the Council open to

the Western European and Other States Group. Turkey was the other contender for that seat. The five overall seats available for election in 2014, distributed regionally, were: one seat for the African Group (currently held by Rwanda); one seat for the Group of Asia- Pacific Group (currently held by the Republic of Korea); one seat for the Group of Latin American and Caribbean States, (currently held by Argentina); and two seats for the Western European and Others Group (currently held by Australia and Luxembourg). Lithuania will maintain for another year, the seat for the Eastern European Group. Along with Lithuania, the non-permanent members that will remain on the Council until the end of 2015 are Chad, Chile, Jordan, and Nigeria.

## AT ANNUAL EVENT, UN MEMBER STATES PAVE WAY FOR ARMS TRADE TREATY

Fifty-two States participated in the year 2014 United Nations treaty event, held annually on the margins of the UN General Assembly's high-level segment, as they signed or ratified a range of treaties on issues spanning human rights, disarmament, the environment, transnational organized crime and world trade, the UN announced at the conclusion of the week-long process which ran from 23<sup>rd</sup> September, to 1<sup>st</sup> October, 2014.

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Adopted by the UN General Assembly in April 2013, the ATT regulates all conventional arms within the categories of battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers and small arms and light weapons. To enter into force, it required 50 ratifications, which it obtained at the latest treaty event session. The ATT will now enter into force on 24<sup>th</sup> December, 2014.

During the course of the treaty event, some 81 actions were completed by Member States. A number of issues were spotlighted, including the protection of the environment, as Djibouti, Gabon, Guyana, Monaco, and Uruguay joined the United States in signing the Minamata Convention on Mercury. The Convention, which was adopted on 10<sup>th</sup> October, 2013 in the Japanese city of Kumamoto, was named after the place where thousands of people were poisoned by mercury in the mid-20<sup>th</sup> century. Twenty other States also signed the Convention, bringing the total number of signatories up to 122, with the US the first country to ratify it. At the same time, the event saw Latvia, Poland, and Spain ratify the Kampala amendments to the Rome Statute, the founding treaty of the International Criminal Court (ICC) – setting a

definition and framework for the prosecution of the crime of aggression.

### **UN GENERAL ASSEMBLY, SECURITY COUNCIL CONCLUDE ELECTIONS FOR 'WORLD COURT' JUDGES**

The United Nations General Assembly and Security Council, on 17<sup>th</sup> November, 2014, elected a fifth judge to a seat on the International Court of Justice (ICJ) – the principal judicial organ of the UN – following the election of four judges in the month November 2014. After voting this afternoon (17<sup>th</sup> November, 2014) in the Assembly and the Council, which met independently but concurrently with each other, Patrick Lipton Robinson of Jamaica was elected to a nine year term on the ICJ, starting on 6<sup>th</sup> February next year. On 6<sup>th</sup> November, 2014, the Assembly and the Council elected four judges – Mr. Mohamed Bennouna of Morocco, Mr. James Richard Crawford of Australia, Ms. Joan E. Donoghue of the United States, and Mr. Kirill Gevorgian of the Russian Federation – also to nine-year terms beginning on 6<sup>th</sup> February, 2015.

The two bodies were originally supposed to elect all five judges on 6<sup>th</sup> November, 2014, but, after seven rounds of voting in the Assembly and four rounds of voting in the Council, the fifth vacancy remained, as both of the two remaining candidates had garnered

the required absolute majority. The following day, several rounds of simultaneous voting in the Assembly and the Council failed to produce agreement on the same candidate to fill the remaining seat. In each of those rounds, Mr. Robinson consistently garnered the majority in the Assembly, while the Council selected Susana Ruiz Cerutti of Argentina. The 15 judges serving on the Court are elected by an absolute majority in both the General Assembly (97 votes) and Security Council (8 votes).

Mr. Bennouna and Ms. Donoghue currently serve on the ICJ, but their current terms expire in February. Judges are eligible for re-election. The other judges' terms in office expire in either 2018 or 2021. The Court's composition at 6<sup>th</sup> February, 2015 will be as follows (terms expire on 5<sup>th</sup> February of the year in parentheses): Peter Tomka, Slovakia (2021); Ronny Abraham, France (2018); Mohamed Bennouna, Morocco (2024); Dalveer Bhandari, India (2018); Joan E. Donoghue, United States (2024); Antônio Augusto Cançado Trindade, Brazil (2018); Giorgio Gaja, Italy (2021); Christopher Greenwood, United Kingdom (2018); James Richard Crawford (Australia) (2024); Hisashi Owada, Japan (2021); Xue Hanqin, China (2021); Julia Sebutinde,

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Uganda (2021); Kirill Gevorgian, Russian Federation (2024); Abdulqawi Ahmed Yusuf, Somalia (2018); and Patrick Lipton Robinson, Jamaica (2024).

## **GUIDELINES ON RIGHTS OF WOMEN ASYLUMSEEKERS, REFUGEES**

The United Nations committee on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) tasked with monitoring implementation of the global treaty to end all forms of discrimination against women has published a set of guidelines, on 6<sup>th</sup> November, 2014 to ensure that the challenges faced by women in situations of displacement and statelessness are addressed and their rights enforced. In a General Recommendation issued on 6<sup>th</sup> November, 2014, the Committee on the Elimination of Discrimination against Women suggests practical measures to improve respect for women's rights, such as ensuring that women are able to lodge independent asylum applications and be heard separately, even if they are part of a family seeking asylum, and providing victims of trafficking access to procedures on seeking asylum without discrimination.

The Committee also recommends that States parties fully integrate a

gender-sensitive approach in asylum claims, and consider “adding sex and/or gender” as well as for reasons of being lesbian, bisexual or transgender, to the list of grounds for refugee status in their national asylum legislation. In addition, the Committee notes in the General Recommendation that seemingly neutral nationality requirements – such as economic self-sufficiency or property ownership – can also discriminate against women because women have more difficulty in meeting those requirements.

The Committee, which comprises 23 independent experts on women's rights from around the world, is mandated to ensure compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was adopted by the UN General Assembly almost 35 years ago and is often described as an international bill of rights for women.

The recommendations are made by the Committee on any issue affecting women to which it believes the States parties should devote more attention. As of January 2014, the Committee has adopted 30 such recommendations.

## **UN SECURITY COUNCIL ACTION ON PALESTINIAN STATEHOOD BLOCKED**

Falling short of the required number of positive votes and faced with a veto from one of its permanent members,

the United Nations Security Council, on 30<sup>th</sup> December, 2014 failed to adopt a draft resolution that would have affirmed the “urgent need” to reach within 12 months a peaceful solution to the situation in the Middle East and would have paved the way to a Palestinian state with East Jerusalem as its capital. The draft also outlined several parameters for the proposed solution – with a one-year deadline for negotiations with Israel and a “full and phased withdrawal of Israeli forces” from the West Bank by the end of 2017 – and would have looked forward to welcoming Palestine as a full UN Member State within the 12-month timeframe, urging both parties to build trust and negotiate in good faith.

Eight of the Council's 15 members voted in favour, one fewer than the nine members needed to pass a resolution in the absence of a veto by any of the Council's five permanent members – China, France, Russia, the United Kingdom or the United States. While the resolution failed to receive the required majority among members, the United States also opposed the text, a move that would have seen the draft fail to pass.

Five Council members abstained from the vote, including the United Kingdom, whose representative, Mark Lyall Grant, said he supported much of the draft's content but was

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disappointed by the lack of negotiation and had therefore abstained.

The representative of France voted in favour, calling on the Council to be a positive actor, “not a theatre,” and noting his support for a “clear timetable” on peace negotiations. The other remaining permanent members also voted in favour of the draft, with Russia's representative, Vitaly Churkin, regretting the Council's failure to adopt, and China's representative, also stating his deep regret.

María Cristina Perceval, the representative of Argentina, said explanation of her affirmative vote was “unnecessary” and lamented the Council's failure to adopt the text, while Chad's representative, Mahamat Zene Cherif, current Council President, said the draft was “balanced and moderate” adding that the Council had “once more missed a date with history”, sending a negative message that encouraged continuation of occupation, injustice and oppression. The Council, he said, had missed an opportunity give the Palestinians “a ray of hope” after direct talks yielded almost nothing.

### **IPU REPORTS - RIGHTS VIOLATIONS OF PARLIAMENTARIANS**

Africa and Asia were the two most dangerous regions of the world in

which to be a Member of Parliament (MP) in 2014, a United Nations-affiliated organization the Inter-Parliamentary Union (IPU) revealed, on 8<sup>th</sup> December, 2014, as it flagged the many perils facing those parliamentarians working for fundamental human rights and exercising their right to freedom of expression. Marking the upcoming Human Rights Day, to be observed globally on 10<sup>th</sup> December, 2014, a new report released by the Inter-Parliamentary Union (IPU) documents a grim list of dangers encountered by MPs around the world, including threats, arbitrary arrest and detention, torture and even death. According to the new report, entitled Human Rights Abuses of MPs – 2014, 311 MPs from 41 countries had their cases examined by the IPU's Committee on the Human Rights of Parliamentarians – a special body which provides effective support to individual MPs whose rights are violated. That number represents a 13 per cent increase from last year in the number of parliamentarians seeking assistance.

The 2014 data shows that 38 per cent of the MPs requesting assistance are from Africa, 25 per cent from Asia, 18 per cent from the Middle East and North Africa, 14 per cent from the Americas and 5 per cent from Europe. Meanwhile, an overwhelming majority of the parliamentarians – 71 per cent – are in opposition MPs. Complaints

emanating from the various regions are often different in nature, the IPU noted, as some regions manifest a greater amount of specific human rights infringements compared to other regional counterparts. In Africa, for instance, for which the IPU's Committee examined the cases of 119 MPs, the most frequently reported violation was “lack of fair trial.” The 78 MPs filing complaints from Asia, on the other hand, mostly lamented arbitrary detentions and violations of freedom of expression – a violation also cited by MPs from the Middle East and North Africa. Meanwhile, in Europe, the 16 MPs who presented cases to the Committee complained of restraints on their freedom of assembly and association whereas the 42 parliamentarians from the Americas largely cited threats and other acts of intimidation.

### **FORTHCOMING EVENTS**

*World Congress on International Law, 9<sup>th</sup> to 11<sup>th</sup> January, 2015*

*Intellectual Property Policy Seminar Jointly organized by the ISIL and the University of Washington School of Law, 16<sup>th</sup> to 17<sup>th</sup> January, 2015*

*WIPO-India Summer School on IP (WSSIN) at ISIL, New Delhi, 02<sup>nd</sup> to 13<sup>th</sup> March, 2015*

*Training Programme on Companies Act, 2013: A Primer” Jointly organized by the ISIL and IICA, 27<sup>th</sup> March, 2015*