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Editorial

INSIDE

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V.K. Krishna Menon Bhawan,
9, Bhagwan Das Road,
New Delhi - 110001 (INDIA)
Tel.: 23389524, 23384458-59
Fax: 23383783
E-mail: isil@isil-aca.org
Website: www.isil.aca.org

On 24th May 2024 WIPO Member States approved a groundbreaking new Treaty related to Intellectual Property (IP), Genetic Resources (GR) and Associated Traditional Knowledge (ATK), marking a historic breakthrough that capped decades of negotiations. The Treaty aims to enhance the efficacy, transparency and quality of the patent system with regard to GR and traditional knowledge associated with genetic resources and prevent patents from being granted erroneously for inventions that are not novel or inventive with regard to GR and ATK. The Treaty suggests the establishment of information systems (such as databases) of genetic resources and associated traditional knowledge, in consultation, where applicable, with Indigenous Peoples and local communities, and other stakeholders, taking into account their national circumstances. The information systems should be accessible to patent offices for the search and examination of patent applications. One or more technical working groups may be established to address any relevant matters, such as accessibility to patent offices. The Treaty provides an in-built review of the Treaty to allow certain issues to be reviewed four years after it enters into force. These issues include the possible extension of the disclosure requirement to other areas of intellectual property and to derivatives, and other issues arising from new and emerging technologies that would be relevant to the application of the Treaty.

Ministry of Commerce & Industry, Government of India commented that WIPO Treaty, is a significant win for countries of the global South and for India, which is a mega biodiversity hotspot with abundance of traditional knowledge, and wisdom. For the first time the system of knowledge and wisdom which have supported economies, societies and cultures for centuries are now inscribed into the global IP system. For the first time the connection between local communities and their GRs and ATK is recognised in the global IP community. These are historic achievements long championed by India as a provider of traditional knowledge and wisdom and repository of biodiversity. The treaty will not only safeguard and protect biodiversity but will increase transparency in the patent system and strengthen innovation. Through this, the IP system can continue to incentivize innovation while evolving in a more inclusive way, responding to the needs of all countries and their communities. After two decades of negotiations and with collective support this treaty has been adopted at the multilateral fora, with a consensus among more than 150 countries. With the majority of the developed countries on board, who generate IP and use these resources and knowledge for research and innovation. This treaty paves the way for bridging conflicting paradigms within the IP system and the protection of biodiversity which have existed for decades. The treaty on ratification and entry into force will require contracting parties to put in place, mandatory disclosure obligations for patent applicants to disclose the country of origin or source of the genetic resources when the claimed invention is based on genetic resources or associated traditional knowledge. This will offer added protection to Indian GRs and TK, which while currently protected in India are prone to misappropriation in countries, which do not have disclosure of obligations. Therefore, by creating global standards on disclosure of origin obligations, this treaty creates an unprecedented framework within the IP system for provider countries of Genetic resources and associated traditional knowledge. At present, only 35 countries have some form of disclosure obligations, most of which are not mandatory and do not have appropriate sanctions or remedies in place for effective implementation. This treaty will require contracting parties, including the developed world, to bring changes in their existing legal framework for enforcing disclosure of origin obligations on patent applicants. The treaty marks the start of the journey to achieve collective growth and deliver the promise of a sustainable future, a cause which India has championed for centuries.

Pravin H. Parekh

India Abstained Voting against *Gaza* at United Nations Human Rights Council

Human Rights Council on 5 April 2024 adopted five Resolutions, including a Text Calling for an Immediate Ceasefire in Gaza, Urging States to Prevent the Continued Forcible Transfer of Palestinians Within or From Gaza, and Calling on States to Cease the Sale or Transfer of Arms to Israel. The five resolutions concerned the human rights situation in the occupied Palestinian territory, including East Jerusalem, realising the rights of the child and inclusive social protection, the right of the Palestinian people to self-determination, human rights in the occupied Syrian Golan, and Israeli settlements in the occupied Palestinian territory, including East Jerusalem, and in the occupied Syrian Golan. India abstained on a resolution at the Human Rights Council that called on Israel for an immediate ceasefire in Gaza and called on states to implement an arms embargo, which was adopted by the 47-member Human Rights Council. India voted in favour of three other resolutions that were also adopted with large majorities on "Right of the Palestinian people to self-determination", "Human rights in the occupied Syrian" Golan, and "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan".

European Court of Human Rights Landmark Ruling on Climate Change

On 8 April 2024, European Court of Human Rights (ECtHR) delivered a landmark decision on climate change in a case *Verein Klimaseniorinnen Schweiz And Others V. Switzerland.* The case originated in an application against the Swiss Confederation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms by an association registered under Swiss law, Verein KlimaSeniorinnen Schweiz, and by four Swiss nationals, all members of that association, on 26 November 2020. The case centred around the impact of climate change on the living conditions and health. The members of association argued that the government's inaction on climate change put them at risk of heatwave-related deaths, with their age and gender making them particularly vulnerable. While the Court deemed the four individual applicants inadmissible, stating that they did not meet the victim-status requirements under Article 34 of the Convention, it recognized the right of the applicant association to file a complaint and ultimately determined that the Swiss Confederation had neglected its duty to fulfill its positive obligations under the Convention concerning the right to respect for private and family life of the Convention, interpreting it as freedom from environmental threats to one's personal life, and a violation of the right to access to the Court. Failure by Switzerland to revise its policies may lead to additional legal actions at the domestic level, potentially resulting in court-imposed financial penalties. Ruling in favor of a Swiss association of over 2,000 Swiss women, the Court found that the Swiss government violated the human rights of its citizens by failing to do enough to combat climate change.

ICJ Rejected Nicaragua's Request to Halt on Germany's Arms Export to Israel

On 30th April 2024, the International Court of Justice (ICJ) rejected Nicaragua's request to order Germany to halt military and other aid to Israel and renew funding for the UN Relief and Works Agency for Palestine Refugees (UNRWA) in a preliminary ruling. The Republic of Nicaragua (hereinafter "Nicaragua") on 1 March 2024, filed in the Registry of the Court an application instituting proceeding against the Federal Republic of Germany (hereinafter

"Germany") concerning alleged breaches of certain international obligations in respect of the Occupied Palestinian Territory. Nicaragua requested the Court to adjudicate and declare that Germany has breached its obligations under the Genocide Convention in particular the obligations provided in Article I by not only failing to prevent the ongoing genocide but by providing aid, including military equipment, to Israel that would be used in the commission of genocide, by Israel, and by withdrawing the financial assistance to the victims provided by UNRWA. Further, that Germany has breached its conventional and customary law obligations, including the obligation to facilitate and cooperate in bringing about the Palestinian People's right to self-determination, by providing aid and particularly military equipment to Israel that is used to deny this right of self-determination and moreover helps to maintain and impose an apartheid regime and also by refusing to prosecute, bring to trial and punish persons responsible for, or accused of grave crimes under international law, including war crimes and apartheid, whether or not such persons are German nationals.

In response, Germany first stated that it has fulfilled the obligation incumbent on States parties to the Genocide Convention to prevent the occurrence of genocide by continuously using all reasonable means at its disposal to exert its influence on Israel in order to improve the situation in Gaza and to furnish humanitarian aid to the population of Gaza. Secondly, it contended that the obligation that could be derived from common Article 1 of the Geneva Conventions incumbent upon non-parties to an armed conflict does not obligate a State to refrain completely from providing military support to a State involved in an armed conflict. It rather requires States supplying arms to an area of armed conflict, before taking decisions regarding exports of military equipment and arms, to conduct a proper risk assessment as to whether such arms will be used to commit breaches of obligations under applicable rules of international law. Germany further contended that it has stringent licensing standards to assess whether there is any risk of serious violations of the Genocide Convention, international humanitarian law and other peremptory norms of international law by the recipient State. According to Germany, there is no evidence that the supply of military equipment to Israel by Germany would have contributed to an alleged genocide or to breaches of international humanitarian law.

Considering the Germany's obligation under Arms Trade Treaty of 2 April 2013 and by the European Council Common Position 2008/944/CFSP of 8 December 2008 (as amended by Council Decision (CFSP) 2019/1560, published on 17 September 2019); significant decrease since November 2023 in the value of material for which the licences were granted, from approximately €200 million in October 2023 to approximately €24 million in November 2023 to approximately €1 million in March 2024; taking into account that since 7 October 2023, according to Germany, only four licences for "war weapons" have been granted: two for training ammunition, one for propellant charges for test purposes, and one concerned the export of 3,000 portable anti-tank weapons; with regard to Germany's failure to "resume its support and financing of UNRWA in respect of its operations in Gaza" the Court noted that Germany announced its decision to suspend its contribution to UNRWA on 27 January 2024 in respect of operations in Gaza. In this regard, the Court observed, first, that contributions to UNRWA are voluntary in nature. Secondly, it noted that, according to the information provided to it by Germany, no new payment was due from the latter in the weeks following the announcement of its decision, by fifteen votes to one, the Court found that the circumstances, as they now present themselves to the Court, are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures.

ITLOS Delivers Advisory Opinion on the Request submitted by the Commission of Small Island States

On 21st May 2024, the International Tribunal for the Law of the Sea (ITLOS) delivered its Advisory Opinion on the Request submitted to the Tribunal by the Commission of Small Island States on Climate Change and International Law. The request had been submitted to the Tribunal by the Commission of Small Island States on Climate Change and International Law ("the Commission") on 12 December 2022. The Commission requested the Tribunal to give an advisory opinion on the specific obligations of State Parties to the United Nations Convention on the Law of the Sea ('UNCLOS'), (a) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere, (b) to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification. In its Advisory Opinion, the Tribunal decided unanimously that it has jurisdiction to give the advisory opinion requested by the Commission and unanimously opined that the obligation under article 192 of the Convention to protect and preserve the marine environment has a broad scope, encompassing any type of harm or threat to the marine environment. Under this provision, States Parties have the specific obligation to protect and preserve the marine environment from climate change impacts and ocean acidification. Where the marine environment has been degraded, this obligation may call for measures to restore marine habitats and ecosystems. Article 192 of the Convention requires States Parties to anticipate risks relating to climate change impacts and ocean acidification, depending on the circumstances. Under article 194, paragraph 5, of the Convention, States Parties have the specific obligation to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life from climate change impacts and ocean acidification. Further, under articles 61 and 119 of the Convention, States Parties have the specific obligations to take measures necessary to conserve the living marine resources threatened by climate change impacts and ocean acidification. In taking such measures, States Parties shall take into account, inter alia, the best available science and relevant environmental and economic factors. This obligation requires the application of the precautionary approach and an ecosystem approach. The obligation to seek to agree under article 63, paragraph 1, and the obligation to cooperate under article 64, paragraph 1, of the Convention, require States Parties, inter alia, to consult with one another in good faith with a view to adopting effective measures necessary to coordinate and ensure the conservation and development of shared stocks. The necessary measures on which consultations are required must take into account the impacts of climate change and ocean acidification on living marine resources. Under article 118 of the Convention, States Parties have the specific obligation to cooperate in taking measures necessary for the conservation of living marine resources in the high seas that are threatened by climate change impacts and ocean acidification. Under article 196 of the Convention, States Parties have the specific obligation to take appropriate measures to prevent, reduce and control pollution from the introduction of non-indigenous species due to the effects of climate change and ocean acidification which may cause significant and harmful changes to the marine environment.

The United States and India Initiative on Critical and Emerging Technology

The United States and India Continue to Chart an Ambitious Course for the Initiative on Critical and Emerging Technology -May/June 2024 on 17th June 2024, a significant meeting of the U.S.-India initiative on Critical and

Emerging Technology (iCET) took place in New Delhi, co-chaired by U.S. National Security Advisor Jake Sullivan and Indian National Security Advisor Ajit Doval. This initiative, which began in January 2023, focuses on enhancing collaboration in cutting-edge technology sectors, including space exploration, semiconductor manufacturing, advanced telecommunications, artificial intelligence, quantum computing, biotechnology, and clean energy. The meeting underscored both countries commitment to ensuring that technological advancements align with democratic values and human rights. It also highlighted the critical role of technology in the security and prosperity of the Indo-Pacific region, and the need to prevent the leakage of sensitive technologies. The discussion included the launch of the U.S.-India Global Challenges Institute, which will receive over $90 million in government funding for research partnerships between U.S. and Indian institutions. Key areas of focus include semiconductor technology, sustainable agriculture, and public health. Additionally, the meeting celebrated the first joint effort between NASA and ISRO at the International Space Station and advanced initiatives in defense technology and space cooperation. The iCET aims to overcome barriers in strategic trade and technology collaboration, fostering innovation and ensuring the security of critical technologies in both nations.

International Criminal Court Convicted Al Hassan (The Mali Situation)

On 26 June 2024, the Trail Chamber X in *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud,* by majority convicted Al Hassan of some of the charges brought against him of the crimes against humanity of torture, persecution and other inhumane acts; and the war crimes of torture, outrages upon personal dignity, mutilation, cruel treatment and passing sentences without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable. He was convicted, by majority, of directly committing the crimes himself, contributing to them with others or aiding and abetting the commission of the crimes by others, in relation to: i) the crimes against humanity of torture; and ii) the war crimes of torture and outrages upon personal dignity; and of contributing to the crimes perpetrated by other members of Ansar Dine/AQIM, in relation to: a) the war crimes of mutilation, cruel treatment and passing sentences without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable; and b) the crimes against humanity of persecution and other inhumane acts. The Chamber found that certain crimes of sexual violence had taken place in Timbuktu during the material time. However, Mr Al Hassan was not found to bear responsibility for those crimes and was consequently acquitted of the following charges: i) the war crimes of rape and sexual slavery; ii) the crimes against humanity of rape, sexual slavery and other inhumane acts in the form of forced marriage. He was also acquitted of the war crime of attacking protected objects.

Workshop on Commercial Arbitration as an Alternative Solution - New Opportunities as Arbitrator

The Indian Society of International Law on 18th May 2024 organised One Day workshop on Commercial Arbitration as an Alternative Solution - New Opportunities as Arbitrator. 48 participants from different parts of the country registered for the workshop. The workshop was inaugurated with the welcome speech by Sh. Narinder Singh, Secretary General ISIL. He delivered the remarks on Emergence of new opportunities as arbitrators. Vast number of topics including introduction to commercial arbitration, agreement to arbitrate and applicable law, establishment of arbitration tribunal, powers, duties and jurisdiction of an arbitral tribunal, role of national courts awards of arbitral tribunal and challenge, recognition and enforcement of awards were touched upon in the workshop. Lectures were delivered by renowned resource persons having expertise in the subject namely Adv. Saju Jacob, Advocate at Supreme Court of India and Solicitor (UK & Germany) & Arbitration Counsel – India & International, Sr. Advocate Naveen R. Nath, Supreme Court of India, Arbitration Counsel – Arbitration Specialist- New Delhi, Adv. S. Ravishankar, Supreme Court of India, Arbitrator- India & International, Law Senate- Arbitration Law Firm- Delhi.

Field Marshal SHFJ Manekshaw Memorial – 2nd International Humanitarian Law Symposium

Army Law College, Pune, on behalf of Research and Journal Cell in collaboration with the Indian Society of International Law (ISIL), jointly organised a two-day Field Marshal SHFJ Manekshaw Memorial – 2nd International Humanitarian Law symposium on 10- 11 May, 2024. The event served as a significant platform for scholars, practitioners, and enthusiasts to engage in constructive dialogue and exchange insights on this crucial field. The Symposium covered enlightening session on "Law on Warfield" and thought-provoking panel discussion on issues related to international humanitarian law, featuring the illustrious presence of Hon'ble Justice Madan Lokur, Former Judge Supreme Court of India, Judge, Supreme Court of Fiji, Dr Luther Rangreji, Joint Secretary, MEA and EC member ISIL, Sh. Narinder Singh, Secretary General, ISIL.

22nd Summer Course on International Law

The ISIL conducted its 22nd Summer Course on International Law from 18-28 June 2024. The course was attended by 115 participants including students, professionals, academicians and advocates from all over the country. The course began with the basic understanding of international law covering introduction, sources and development of international law and also focussed on the specific areas of international law including international air and space law, the law of the sea, international human rights, humanitarian law, refugee law, intellectual property rights, international arbitration, international economic law, environmental law, trade law, private international law and a lecture on career in international law. The lectures were delivered by renowned resource persons having expertise in the respective areas, namely, Sh. Narinder Singh, Secretary General, ISIL, Prof. M Gandhi, Vice President, ISIL, Prof. Manoj Kumar Sinha, Vice Chancellor Dharmashastra National Law University, Prof. (Dr) C Jayaraj, EC Member, ISIL, Dr Luther Rangreji, Joint Secretary, MEA, Prof. VG Hegde, CILS, JNU, Maj. Gen. Nilendra Kumar, Executive President, ISIL, Prof. Anupam Jha, PIC Law Centre-II, Delhi University Prof. (Dr) Benarji Chakka, Dean VIT-AP, Dr Shikhar Ranjan, Director, AALCO, Prof. (Dr) Rashmi Salpekar, Dean and Head VIPS, Prof. Abdulrahim Vijapur, Former Prof. AMU, Aligarh, Ms Gunjan Chawla, Legal Advisor, ICRC, Prof. Dr James Nedumpara, Head CTIL, Dr Sai Ramani Garimella, SAU, Prof. Dr Risham Garg, NLU Delhi, Mr Kiran Mohan Vazhapully, Senior Legal Officer, AALCO, Sh. MK Rao, Former Director, L&T, MEA, Prof. (Dr) Ravindra Pratap, Dean, SAU, Dr Vinai Kumar Singh, Associate Professor, CILS, JNU, Dr Parineet Kaur, Assistant Professor ISIL, Ms. Mythili R, Senior Legal Officer, L&T, MEA, Dr Kanika Sharma, Assistant Professor, ISIL, Dr Archna Negi, JNU, Capt. SS Parmar, Dr Santosh Upadhyay, Law Centre-I, , Ms Jyoti Singh, Advocate, Supreme Court, Dr Sunil Kumar Agarwal, Maritime Expert, Dr Anwar Sadat, Senior Assistant Professor, ISIL, Advocate Saju Jacob, Advocate (IND) &Solicitor UK, Ireland, Germany. The course was successfully concluded with the distribution of certificates.

FORTHCOMING EVENTS

23rd Henry Dunant Memorial Moot Court Competition 2024 (National Round): Jointly organized by The Indian Society of International Law (ISIL) and International Committee of the Red Cross (ICRC), New Delhi: 20-22 September 2024

Tenth International Conference on International Law: 25th October-27th October, 2024