



# The Indian Society of International Law NEWSLETTER

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For members only

## EDITORIAL

### *India Signed the Biodiversity Beyond National Jurisdiction Treaty to Conserve Marine Diversity in High Seas*



India has taken a significant step towards marine conservation by signing the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ) adopted on 19 June 2023. This international treaty, aimed at protecting marine biodiversity on the high seas, was signed by External Affairs Minister, Dr. S. Jaishankar, at the United Nations Headquarters in New York on 25 September 2024. This landmark decision of signing marks a significant step towards the conservation and sustainable utilisation of marine biological diversity in areas beyond national jurisdiction was approved by the Union Cabinet in a meeting chaired By the Prime Minister Sh. Narinder Modi held on 2<sup>nd</sup> July 2024. Often referred to as the 'High Seas', areas beyond national jurisdiction are the global common oceans open to all for internationally lawful purposes such as navigation, overflight, laying submarine cables and pipelines, etc. The Ministry of Earth Sciences will spearhead the country's implementation of the BBNJ Agreement. Dr Jitendra Singh, Minister of State in the Prime Minister's Office, on the occasion said

"India remains committed and proactive to the global cause of environmental conservation and sustainable development. We will be signing (the BBNJ Agreement) and are propitious of subsequently ratifying it through the necessary legislative processes". The government is aligned to scientific progress, strengthening international collaboration, and promoting governance, transparency, accountability, and the rule of law."

Dr M Ravichandran, Secretary, MoES, elaborating on the benefits for India, said, "The BBNJ Agreement allows us to enhance our strategic presence in areas beyond our EEZ (Exclusive Economic Zone), which is very promising. In addition to shared monetary benefits, it will further strengthen our marine conservation efforts and collaborations, open newer avenues for scientific research and development, access to samples, sequences and information, capacity building and technology transfer, etc., not just for us but for the benefit of the entire humankind". He added that India signing the BBNJ Agreement is another crucial step towards ensuring that our oceans remain healthy and resilient.

The primary objective of BBNJ is to ensure the conservation of marine life and promote its sustainable use on the high seas. Under the overall objective of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, for the present and in the long-term, through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination, the Agreement addresses four main issues: marine genetic resources, including the fair and equitable sharing of benefits; measures such as area-based management tools, including marine protected areas; environmental impact assessments; and capacity-building and the transfer of marine technology. The Agreement also addresses a number of "cross-cutting issues", establishes a funding mechanism and sets up institutional arrangements, including a Conference of the Parties and various subsidiary bodies, a Clearing-House Mechanism and a Secretariat.

The BBNJ Agreement will be the third implementation agreement under UNCLOS when it enters into force, alongside its sister implementation agreements: the 1994 Part XI Implementation Agreement (which addresses the exploration and extraction of mineral resources in the international seabed area) and the 1995 UN Fish Stocks Agreement (which addresses the conservation and management of straddling and highly migratory fish stocks). UNCLOS was adopted on December 10, 1982, and came into force on November 16, 1994. It is crucial for the environmental protection of the seas and addressing maritime boundaries, rights to marine resources, and dispute resolution. It establishes the International Seabed Authority to regulate mining and related activities on the ocean floor beyond national jurisdiction. As of today, more than 160 countries have ratified UNCLOS. It is vital to maintaining order, equity, and fairness in using the world's oceans. The BBNJ Agreement was agreed upon in March 2023 and is open for signature for two years starting September 2023. It will be an international legally binding treaty after it enters force 120 days after the 60<sup>th</sup> ratification, acceptance, approval or accession. As of June 2024, 91 countries have signed the BBNJ Agreement, and eight Parties have ratified it.

Pravin H. Parekh

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Pravin H. Parekh

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# RECENT DEVELOPMENTS

## **UNGA Adopted Draft Resolution to Bridge AI Gaps**

United Nations General Assembly on 1st July 2024 adopted Resolution 78/311 titled “Enhancing International Cooperation on Capacity-Building of Artificial Intelligence” to bridge the artificial intelligence and other digital divides between and within countries, and to enhance international cooperation on capacity building in developing countries, including through North-South, South-South and triangular cooperation, with full consideration of the needs, policies and priorities of developing countries, with the aim of harnessing the benefits of artificial intelligence, minimizing its risks, and accelerating innovation and progress toward the achievement of all 17 Sustainable Development Goals. It further, calls upon the international community to provide and promote a fair, open, inclusive and non-discriminatory business environment across the life cycle of safe, secure and trustworthy artificial intelligence systems. It emphasizes the ethical and human rights aspects of AI development.

## **ICJ Allowed Seven Nations to Intervene in Rohingya Genocide Case**

By an Order dated 3 July 2024, the International Court of Justice decided on the admissibility of the declarations of intervention filed by seven States in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v. Myanmar*). In its Order, the Court unanimously, decided that the declaration of intervention under Article 63 of the Statute submitted jointly by Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland is admissible in so far as it concerns the construction of

provisions of the Convention on the Prevention and Punishment of the Crime of Genocide. In accordance with Article 86 of the Rules of Court, the seven States concerned were allowed to submit their written observations on the subject-matter of their interventions.

## **UN Commission on International Trade Law Concluded its 57th Session in New York**

U N C o m m i s s i o n o n International Trade Law (UNCITRAL) at its 57th Session (UNIS/L/363) on 16th July 2024, adopted four new texts (the UNCITRAL/UNIDROIT Model Law on Warehouse Receipts, the Statute of the Advisory Centre on International Investment Dispute Resolution, the UNCITRAL Model Clauses on Specialized Express Dispute Resolution, and the UNCITRAL Model Law on Automated Contracting) and agreed on a future programme of work. First, The UNCITRAL/UNIDROIT Model Law on Warehouse Receipts was developed as a joint project of UNCITRAL and the International Institute for the Unification of Private Law (UNIDROIT). It provides for a legal framework that covers the private law aspects of a warehouse receipt system for adoption by States seeking to reform their legislation in this area. It contemplates the issuance and transfer of both paper-based and electronic warehouse receipts on a medium-neutral and technology-neutral basis. This allows the use of central registries, distributed ledgers, platforms and other technologies for managing the electronic warehouse receipts. Secondly, the Statute of the Advisory Centre on International Investment Dispute Resolution, a further element of the broader reform of the investor-State dispute settlement system (ISDS) undertaken in UNCITRAL. It is expected to provide crucial legal services in the field of ISDS, including training and

representation services with the aim of enhancing the capacity of States, especially least developed countries and developing countries, to prevent and handle international investment disputes. It is anticipated that the Statute will become a Protocol to the multilateral instrument on ISDS reform currently being prepared by UNCITRAL Working Group III as an instrument to allow States to implement a wide range of reform elements.

Thirdly, UNCITRAL Model Clauses on Specialized Express Dispute Resolution (the “SPEDR Model Clauses”), building on the UNCITRAL Expedited Arbitration Rules, offer customized solutions for parties in dispute with four model clauses. Designed as a resource for businesses and practitioners engaging in international dispute resolution, especially when speed (Model Clause on Highly Expedited Arbitration), ongoing contract performance (Model Clause on Adjudication), technical expertise (Model Clause on Technical Advisor) or confidential data (Model Clause on Confidentiality) are crucial factors, the SPEDR Model Clauses provide parties with tailored means to settle disputes in an expeditious manner, ensuring the integrity and effectiveness of their dispute resolution processes, while catering for their unique needs. And fourthly, UNCITRAL Model Law on Automated Contracting. The UNCITRAL Model Law on Automated Contracting provides a legal framework to enable the use of automation in international contracts, including through the deployment of artificial intelligence and “smart contracts”, as well as in machine-to-machine transactions. It is intended to complement and supplement existing laws on electronic transactions, in particular those based on other UNCITRAL electronic commerce texts.

### ICJ Advisory Opinion in The Occupied Palestinian Territory (OPT Case)

On 19th July 2024, the International Court of Justice, delivered its advisory opinion in the case Legal Consequences Arising from The Policies and Practices of Israel in The Occupied Palestinian Territory, Including East Jerusalem. As to the jurisdiction of the court, the Court confirmed that it has jurisdiction to give the requested advisory opinion based on Article 65, paragraph 1 of the Statute and Article 96, paragraph 1 of the Charter. It stated that the request made by the General Assembly is in accordance with the Charter and the questions submitted are of legal character. While the Court has the discretion to decide whether to give an opinion, Article 65, paragraph 1 of the Statute indicates that only "compelling reasons" can lead the Court to refuse to exercise its judicial function. In the present proceedings, the General Assembly sought advisory opinion with respect to two questions. First, regarding the legal consequences arising from certain settlement policies and practices of Israel as an occupying power in a situation of belligerent occupation since 1967. Secondly, relating to how such policies and practices affect the legal status of the occupation in light of certain rules and principles of international law and to the legal consequences which arise from this status.

The ICJ discussed the legal consequences of Israel's settlement policy in the occupied Palestinian territory, specifically in the West Bank and East Jerusalem. The Court noted certain degree of ambiguity as the term "settlement" has different interpretations, referring to either the residential communities themselves or all related infrastructure and processes. It examined Israel's settlement policy

comprehensively, and said that distinction is made sometimes between "Settlements" and "Outposts". While Israel distinguishes between "settlements" and "outposts" based on their legality under Israeli law, the ICJ considers this distinction irrelevant. The key factor is whether the communities are established or maintained with Israel's support. It further observed that Israel's settlement policy has been examined extensively by various UN bodies, including the Human Rights Council and the Secretary-General. These examinations have documented the facts surrounding the establishment and expansion of Israeli settlements. It further noted that, between 1967 and 2005, Israel's settlement policy was carried out in the West Bank, East Jerusalem and the Gaza Strip. Since the removal of Israel's settlements from the Gaza Strip in 2005, Israel's settlement policy has continued in the West Bank and East Jerusalem. At the same time, the Court observed that Israel's settlement policy carried out in the Gaza Strip until 2005 was not substantially different from the policy that continues in the West Bank and East Jerusalem today.

The Court then examined another request posed by the General Assembly related to the manner in which the policies and practices of Israel have affected the legal status of the occupation in light of the relevant rules and principles of international law. With regard to this question the Court has determined that Israeli policies and practices and the manner in which they are implemented and applied on the ground have significant effects on the legal status of the occupation through the extension of Israeli sovereignty to certain parts of the occupied territory, their gradual annexation to Israeli territory, the exercise of Israeli governmental

functions and the application of its domestic laws therein, as well as through the transfer of a growing number of its own nationals to those parts of the territory and impeding the exercise of the right to self-determination of the Palestinian people. As a result, these policies and practices have brought about changes in the physical character, legal status, demographic composition and territorial integrity of the Occupied Palestinian Territory, particularly the West Bank and East Jerusalem. These changes manifest an intention to create a permanent and irreversible Israeli presence in the Occupied Palestinian Territory. The Court observed that the effects of Israel's policies and practices as discussed above, and its exercise of sovereignty over certain parts of the Occupied Palestinian Territory, particularly the West Bank and East Jerusalem, constitute an obstruction to the exercise by the Palestinian people of its right to self-determination. The effects of these policies and practices include Israel's annexation of parts of the Occupied Palestinian Territory, the fragmentation of this territory, undermining its integrity, the deprivation of the Palestinian people of the enjoyment of the natural resources of the territory and its impairment of the Palestinian people's right to pursue its economic, social and cultural development.

The Court considered it important to stress as it did in its Wall Advisory Opinion, "the urgent necessity for the United Nations as a whole to redouble its efforts to bring the Israeli-Palestinian conflict, which continues to pose a threat to international peace and security, to a speedy conclusion, thereby establishing a just and lasting peace in the region". The Court also considered that the realization of the right of the Palestinian people to self-determination, including its right to



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an independent and sovereign State, living side by side in peace with the State of Israel within secure and recognized borders for both States, as envisaged in resolutions of the Security Council and General Assembly, would contribute to regional stability and the security of all States in the Middle East.

The Court unanimously found that it has jurisdiction to give the advisory opinion requested; By fourteen votes to one, decided to comply with the request for an advisory opinion; By eleven votes to four, the court was of the opinion that the State of Israel's continued presence in the Occupied Palestinian Territory is unlawful; By eleven votes to four, the court was of the opinion that the State of Israel is under an obligation to bring to an end its unlawful presence in the Occupied Palestinian Territory as rapidly as possible; By fourteen votes to one, it found that the State of Israel is under an obligation to cease immediately all new settlement activities, and to evacuate all settlers from the Occupied Palestinian Territory; By fourteen votes to one, it was of the opinion that the State of Israel has the obligation to make reparation for the damage caused to all the natural or legal persons concerned in the Occupied Palestinian Territory; By twelve votes to three, it was of the opinion that all States are under an obligation not to recognize as legal the situation arising from the unlawful presence of the State of Israel in the Occupied Palestinian Territory and not to render aid or assistance in maintaining the situation created by the continued presence of the State of Israel in the Occupied Palestinian Territory; By twelve votes to three, it was of the opinion that international organizations, including the United Nations, are under an obligation not to recognize as legal the situation arising from the unlawful presence of

the State of Israel in the Occupied Palestinian Territory; By twelve votes to three, the Court said that the United Nations, and especially the General Assembly, which requested this opinion, and the Security Council, should consider the precise modalities and further action required to bring to an end as rapidly as possible the unlawful presence of the State of Israel in the Occupied Palestinian Territory.

## **Council of Europe Adopted First Global AI Treaty for Signatures**

On Sep. 5, 2024, The Council of Europe adopted and opened the world's first binding global treaty on AI, human rights, democracy, and the rule of law for signature during a conference of Council of Europe Ministers of Justice in Vilnius. The treaty, called "the Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law" is the first-ever international legally binding treaty aimed at ensuring that the use of AI systems is fully consistent with human rights, democracy and the rule of law. The Framework Convention was signed by Andorra, Georgia, Iceland, Norway, the Republic of Moldova, San Marino, the United Kingdom as well as Israel, the United States of America and the European Union. It aims to ensure that activities within the lifecycle of artificial intelligence systems are fully consistent with human rights, democracy and the rule of law, while being conducive to technological progress and innovation. The work on the treaty was initiated in 2019, when the ad hoc Committee on Artificial Intelligence (CAHAI) was tasked with examining the feasibility of such an instrument. Following its mandate, it was succeeded in 2022 by the Committee on Artificial Intelligence (CAI) which drafted and negotiated the text. The Framework Convention was drafted by the 46 member states of the Council of

Europe, with the participation of all observer states: Canada, Japan, Mexico, the Holy See and the United States of America, as well as the European Union, and a significant number of non-member states: Australia, Argentina, Costa Rica, Israel, Peru and Uruguay.

The Framework Convention applies primarily to public authorities, and to private actors acting on behalf of public authorities (Article 3(1)A&B), with discretion granted to signatories on how to address private actors. It lays out a risk-based approach to AI, and applies to the full lifecycle of an AI system. The Framework sets forth principles related to activities within the lifecycle of artificial intelligence systems requiring States to adopt or maintain measures with respect to human dignity and individual autonomy, equality and non-discrimination, respect for privacy and personal data protection, transparency and oversight, accountability and responsibility, reliability and safe innovation. Nevertheless, the treaty stipulates that remedial procedures should be created for "violations of human rights resulting from the activities within the lifecycle of artificial intelligence systems" (Article 14). Similar to the EU AI Act, the treaty states that to the extent possible, users should be notified if they are interacting with AI systems (Article 15). In order to ensure its effective implementation, the convention establishes a follow-up mechanism in the form of a Conference of the Parties. Finally, it requires that each party establishes an independent oversight mechanism to oversee compliance with the convention, and raises awareness, stimulates an informed public debate, and carries out multistakeholder consultations on how AI technology should be used.

## Visit of Law Students



On 9th August, 2024, 18 students of B.A.L.L.B. (H) 10th Semester of Bimal Chandra College of Law, Kandi, Murshidabad, West Bengal

alongwith their faculty members visited the ISIL. Secretary General, Sh. Narinder Singh interacted with the students and faculty members on

the importance and role of international law. Further, he discussed about pursuing international law as career.

## Convocation and Inauguration of the PG Diploma Courses



The ISIL organized the Convocation for awarding the PG Diploma Courses Certificates for the session 2023-2024 on 2 September 2024. The ceremony was also marked to inaugurate the Post Graduate

Diploma Courses for the academic session 2024-2025 conducted by the Indian Academy of International Law and Diplomacy, a teaching wing of the Indian Society of International Law. The Chief Guest Hon. Mr. Justice

Vipin Sanghi, Former Chief Justice of Uttarakhand High Court and Judge Delhi High Court delivered the inaugural and convocation address on the occasion. Hon'ble Dr. Sadhna Shanker, Member, National



## RECENT ACTIVITIES

Consumer Disputes Redressal Commission, delivered special address. Prof. (Dr) Anupam Jha, Treasurer ISIL, welcomed the Chief Guests and Students. Shri Pravin Parekh, President, ISIL and Shri Narinder Singh, Secretary General, ISIL also addressed the students. Mr Himanshu Yadav received V. K. Krishna Menon Memorial Gold Medal for securing highest marks in Post Graduate Diploma Course in International Law & Diplomacy; Mr

Dhiraj Verma received V.K. Krishna Rao Memorial Gold Medal for securing highest marks in Post Graduate Diploma Course in International Trade and Business Law; Ms. Sanjana Rai received Judge Nagendra Singh Memorial Gold Medal for securing highest marks in Post Graduate Diploma Course in Human Rights, International Humanitarian & Refugee Laws; Ms. Sanjana Rai received Justice Rajinder Sachar Memorial Award Post

Graduate Diploma Course in Human Rights, International Humanitarian & Refugee Laws; Ms. Hina Khan received M. K. Nawaz Memorial Gold Medal in Post Graduate Diploma Course in Intellectual Property Rights Law and Ms. Aradhana Gupta received Merit Certificate for securing highest marks in Post Graduate Diploma Course International Environmental Law.

### Special Lecture on The Goals and Functions of International Economic Law



The Indian Society of International Law on 12th September 2024 organized Special Lecture on “The Goals and Functions of International Economic Law” delivered by Prof. Michael Waibel, Professor of International Law, Co-Editor-in-Chief, JIEL, University of Vienna, Faculty of Law. Sh. Narinder Singh, Secretary General, ISIL felicitated the speaker and delivered the welcome address. Prof. Waibel focused on the

goals and functions of International Economic Law and how have these goals and functions evolved over the time. He mentioned and elaborated five basic functions of international economic law, firstly, producing global public goods, peace and international economic stability, the second interdependency between states to ensure that actions taken by one and more States do not have significant adverse effect on other

State, third, enhancing global economic welfare in increasing economic exchange, fourth creation of stable rules to enable economic operators to plan ahead and fifth to protect business and individuals, economic operators from arbitrary State actions. The lecture concluded with the discussion and questions by the participants. Sh. Pravin H Parekh, President ISIL delivered the concluding remarks.

## Roundtable Discussion on “IHL Yesterday, Today and Tomorrow: Reflections on Teaching International Humanitarian Law in India”



The Indian Society of International Law (ISIL) and International Committee of the Red Cross (ICRC), New Delhi jointly organized Academics' Roundtable Discussion on “IHL Yesterday, Today and Tomorrow: Reflections on Teaching International Humanitarian Law in India” at ISIL on 20th September 2024. The first session of the discussion was held on Promoting IHL in Academia: Opportunities, Challenges and Best practices aiming at providing opportunities to the participants to share their IHL

projects and programs. Theme of session II was on “Responding to the Challenges Posed by Emerging Technologies for IHL: Digitalization of the Distinctive Emblem” aiming to foster reflection and discussion on the challenges posed by emerging technologies for IHL with a focus on cyber operations in armed conflict. Academicians, Advocates, PhD Scholars, Students etc participated in the discussion. Maj. General Nilendra Kumar, Wing Cmdr Praful Bakshi, Prof. Rashmi Salpekar, Dean, VIPS, Prof. Rishikesh Dave, Dean, Sharda

University, Prof. Vijay Kumar Singh, Dean, SRM University, Dr Vinai Kumar Singh, Associate Prof., JNU, Prof. Kasim Balarbe, OP Jindal Global University, Dr Syed Iqbal Ahmad, Assistant Prof. NLU Delhi, Dr Abdullah Nasir, Assistant Prof. RML National Law University, Lucknow, Dr Santosh Upadhyay, Assistant Prof., DU, Dr Ravneet Sandhu, Assistant Prof., VIPS, Daniel Stein, Assistant Prof., OP Jindal Global University discussed the themes on teaching and research tracks.

## 23rd Henry Dunant Memorial Moot Court Competition 2024 (India National Round)



# RECENT ACTIVITIES

The Indian Society of International Law (ISIL) and International Committee of the Red Cross (ICRC), New Delhi jointly organized 23rd Henry Dunant Memorial Moot Court Competition from 20-22 September 2024 at ISIL. The Competition was inaugurated by Hon'ble Mr Justice S Muralidhar, Judge, Delhi High Court. 58 Teams participated in the competition. 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 impressions and court manners. Eminent professors, legal officers, Army personal and international law scholars judged the teams in quarter-final, semifinal rounds. Hon'ble Mr. Justice Madan B Lokur, former Judge Supreme Court of India, Prof. (Dr) BT Kaul, and Dr Luther Rangreji, Director, Ministry of External Affairs, were the final round judges. University of Petroleum and Energy Sciences (UPES), Dehradun and National Law University, Jodhpur, were the winner and runner up of the

competition respectively. Ms. Stuti Pandey, University of Petroleum and Energy Sciences (UPES), Dehradun and Mr. Ashwad Dhinakaran were adjudged the Best Advocate jointly. Mr. Shoubhit Daftuar, Maharashtra National Law University Mumbai, Mr. Siddharth Samanta, O.P Jindal Global University, Sonipat and Ms. Priya Kumari, Bennett University, Greater Noida won the Best Researcher Award. National Law University, Jodhpur and Maharashtra National Law University Mumbai won Best Memorial Award.

## Forthcoming Events

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

**14th Winter Course on Alternative Dispute Resolution: Harmonizing International and National Perspective: 23-28 December, 2024**

(This issue of newsletter has covered the activities of ISIL for the period from July to September 2024)