



The Indian Society of International Law

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Editorial



The United Nations Climate Change Conference in Cancún, Mexico, took place from 29 November to 11 December 2010. The main discussion topic at the Conference was concerned with the two-track negotiation process under the Ad hoc Working Group on Long-Term Cooperation (AWG-LCA) and under the Ad hoc Working Group on Kyoto Protocol. The objective of the AWG-LCA was to enhance the long-term cooperation under the United Nations Framework Convention on Climate Change and the AWG-KP was assigned to fix the greenhouse gas mitigation commitments after the end of the first commitment period of the Kyoto Protocol in 2012.

One of the major elements of the Cancún Agreement is its acknowledgement for the first time in a U. N. document of the need to keep global average temperature rise below 2 degree celsius. Although several sources argue that current emission reduction pledges will not be sufficient to realize this target, it does provide a long-term target for international action to move towards. Another key aspect is the creation of a Technology Mechanism to support international technology transfer, especially to developing countries. It will be managed by a Technology Executive Committee (TEC) with support of a Climate Technology Centre and Network (CTCN). Among the TEC functions are to: provide guidance on policy and programme priorities; recommend actions to address barriers to technology transfer; and to catalyze development and use of technology road maps or action plans.

One of the key aspects of the Cancún Agreements is the outline of a phased approach to strengthen efforts by developing countries to realize the goal of mitigation with the help of Reducing Emissions from Desertification and Degradation of Forests (REDD +).

In Cancún, the developed countries made a collective commitment to mobilize US \$30 billion as fast-start finance for the period 2010-2012. In long-term finance, the developed countries have decided to mobilize 100 billion US dollars per year by 2020 to support the mitigation and adaptation needs of the developing countries. The rich nations have set-up Green Climate Fund (GCF) to administer the 100 billion dollars per year. The GCF will be an operating entity of the Framework Convention on the Climate Change's (FCCC) financial mechanism and will be accountable to and function under the guidance of the Conference of the Parties (COPs).

The adaptation component of the climate change regime got further strengthened at Cancún where it was decided to establish a Cancun Adaptation Framework to allow better planning and implementation of adaptation projects. In addition, the Clean Development Mechanism as one of the flexibility mechanisms to reduce greenhouse gases was retained. What figured prominently in the Cancun is the lack of bonhomie between the U. S. and China, which is responsible for its failure to produce legally binding commitments on the cuts in greenhouse emissions after 2012.

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R. P. Anand

RECENT ACTIVITIES

SIXTH SOUTH ASIAN HENRY DUNANT MEMORIAL MOOT COURT COMPETITION

The ISIL and the International Committee of the Red Cross (ICRC) organized the Sixth South Asian Regional Henry Dunant Memorial Moot Court Competition at the ISIL premises from 22 -24 October 2010. Prof. R. P. Anand, President, ISIL, made opening remarks and introduced the activities of the ISIL and Mr. Francois Stamm, Head of the Regional Delegation, ICRC, gave an address. Hon'ble Justice Cyriac Joseph, Judge, Supreme Court of India, gave inaugural address. He underscored the importance of International Humanitarian Law (IHL) and the necessity for non-state parties to become party to various IHL instruments. Prof. Rahmatullah Khan, Secretary General, ISIL gave concluding remarks. Participants from Bangladesh, Iran, Nepal, Sri Lanka and India who happen to be winners of their respective national rounds of Henry Dunant Memorial Moot Court Competition of each country participated in this Sixth South Asian Henry Dunant Moot Court Competition (Regional Round).

The Competition was conducted in three stages, Quarter-final, Semi-final and Final Rounds. The participants were judged on the basis of their written memorials, appreciation of facts and law, advocacy skills, use of authorities and citations, general impression and court manners. Eminent academicians, government officers and lawyers judged the teams in all the rounds. Hon'ble Justice Ravindra Bhat, His Excellency Prof. Gudumunder Eiriksson, Ambassador of Iceland to India, and His Excellency Prof. (Dr.) Rahmat Mohammad, Secretary General, AALCO, were the final round judges. *Hidayatullah National Law University, Raipur, India* and *The Open University, Sri Lanka* were the winner and runner-up of the competition respectively. *Mr. Nischal Pokharel, Kathmandu School of Law, Nepal* was adjudged the Best Advocate, *Mr. Saeed Farhad Nia, University of Shahid Beheshti, Tehran, Iran* won the Best Researcher award, *University of Dhaka, Bangladesh* won the Best Memorial Award in this competition. Hon'ble Justice Ravindra Bhat gave valedictory address. Prof. J. L. Kaul, Member, EC, gave formal vote of thanks.



THE FELICITATION OF PROFESSOR FRANCISCO ORREGO VICUÑA PROFESSOR OF INTERNATIONAL LAW AT THE UNIVERSITY OF CHILE

The ISIL organised a programme on 2nd October 2010 at the ISIL premises to felicitate Prof. Francisco Orrego Vicuña, Professor of International Law at the University of Chile. Professor Francisco Orrego-Vicuña was born in Santiago, Chile, on April 12, 1942. He speaks and writes fluently in Spanish, English and French. He completed his Law Degree in 1965 and admitted to legal practice on the very year. He holds a Ph. D. degree in international law from the University of London (London School of Economics and Political Science). Professor Orrego-Vicuña is professor of law at the University of Chile and has been the co-director of the joint LL. M. Program with the University of Heidelberg, which specializes in international law, international trade, investment and arbitration law. Professor Orrego-Vicuña has been a visiting professor at the University of Paris II, Stanford University and the University of Miami. He has been recognized by the Chilean Government with the National Award on Social Sciences and the Humanities and also by the award of the Medal of Merit of the University of Heidelberg. He was awarded in the national contest organized by the UNESCO honouring the centennial of the birth of Rabindranath Tagore (1961). He has been a member of the Court of the LCIA and its Vice President. He is an arbitrator at 20

Essex Street Chambers in London. He has been the President of numerous arbitration tribunals including ICSID, the ICC, the NAFTA and the Ad-hoc Arbitration as well as a judge and former President of the World Bank Administrative Tribunal. He has also been a member of a dispute settlement panel in the World Trade Organization. He has extensively published in international dispute settlement and other central questions of international law. He has been President of the Institut de Droit International (2005-2007). He is a member of many prestigious institutions namely, Associate member of the Argentine Society of International Law (1975); Member of the Chilean Society of International Law (1979); Member of the French Society of International Law; Member of the British Institute of International and Comparative Law etc. He was Rapporteur on Liability in International Environmental Law. He was Rapporteur and Chairman of the International Committee on the Protection of Persons and Property, International Law Association, 2000-2006. He delivered the Sir Hersch Lauterpacht Memorial Lectures at the Cambridge Research Centre of International Law (2001).

Prof. Vicuna also delivered a lecture on "New Issues for International Law Arising from the Investment Arbitration Practice in Latin America". In the lecture he expressed his gratitude to ISIL. On this occasion, a shawl and memento were presented by Prof. R. P. Anand, President, ISIL. Prof. Rahmatullah Khan, Secretary General, ISIL, read citation of Prof. Vicuna and congratulated him for his achievements. On

the very occasion, Centre for International Legal Studies, SIS, Jawaharlal Nehru University, New Delhi represented by Prof. Yogesh K. Tyagi, Dean, School of International Studies, JNU garlanded Prof. Vicuna. Prof. Tyagi also addressed briefly and underlined the contributions of Prof. Vicuna. Dr. V. G. Hegde, Treasurer, ISIL, proposed a formal vote of thanks.

UGC REFRESHER COURSE IN HUMAN RIGHTS AND SOCIAL JUSTICE, INTERNATIONAL HUMANITARIAN AND REFUGEE LAWS

ISIL organized the first UGC Refresher Course on Human Rights and Social Justice, and International Humanitarian and Refugee Law for international relations, law, and social science teachers from 9 to 30 November 2010. Prof. Upendra Baxi, Former Vice Chancellor, Delhi University, delivered special lecture to the participants of the Course. In his address, he highlighted significance of the subjects undertaken in the Course and underlined the need to follow the contemporary developments in the human rights discourse where a significant impediment to the enforcement of international law is the notion of 'state sovereignty' or the principle that states have 'supreme authority within a territory'. Eminent professors and scholars from prestigious universities and institutions, including International Committee of the Red Cross, New Delhi and United Nations High Commissioner for Refugee, New

Delhi, delivered lectures on various topics of human rights and social justice, and international humanitarian and refugee law. About 30 teachers participated in this UGC Refresher Course. Prof. R. P. Anand, President, ISIL, delivered valedictory address and distributed certificates to the participants. Shri Vinai Kumar Singh, Assistant Professor, ISIL gave a formal vote of thanks.

SPECIAL LECTURE ON 'TOWARDS ECONOMIC RECOVERY, THE ROLE OF INTERNATIONAL COMMERCIAL ARBITRATION' BY MR ADRIAN WINSTANLEY, DIRECTOR GENERAL, LONDON COURT OF INTERNATIONAL ARBITRATION

The ISIL organised a Special Lecture on *Towards Economic Recovery, the Role of International Commercial Arbitration* on 12 November 2010 at its premises. Shri A. K. Ganguli, Senior Advocate, Supreme Court of India, welcomed and introduced the speaker, Mr. Adrian Winstanley, Director General, London Court of International Arbitration. The lecture witnessed lively exchange of views from the audience on his presentation. Dr. V. G. Hegde, Treasurer, ISIL gave vote of thanks.

FIRST WINTER COURSE ON INTERNATIONAL ENVIRONMENTAL LAW

The ISIL organized its First Winter Course. The subject chosen was the International Environmental Law. The course was

conducted at the ISIL premises from 13 – 17 December 2010 and the Course received a good response with 94 participants from all parts of the countries. The Winter Course was intended to provide indepth understanding on international environmental law and highlight contemporary issues to the participants. The Course was inaugurated by Prof. Upendra Baxi, Former Vice Chancellor, Delhi University, Delhi on 13 December 2010. He said, "I am delighted to be here at the Indian Society of International Law (ISIL) and address the students, members of this renowned place of learning and other guests present here. My greeting to you all. The ISIL has been the source of enlightened learning for over 50 years now. ISIL is well known for its international character, diversity and research, enriched by its heritage and preparedness for future. It is a tribute to the qualities of academia, leadership and public service which ISIL imparts. Many eminent scholars are a product of the ISIL. I congratulate the members of the ISIL for their great achievements and maintaining excellence. I am happy to see so many of you have chosen to participate in the Winter Course on International Environmental Law organized by the Indian Society of International Law (ISIL). I am convinced that it is the only specialized course of this nature which is filled with international law experts, which could come out with some practical and workable ideas in this regard. As I said earlier, the challenges posed by the exponential growth of international environmental law makes us to plan for the development of the human resources in international environmental law so that the discipline and the nation will be better served. Perhaps the time has come for ISIL to take a serious look at the formidable challenges in this regard. I wish the participants a great success." Prof. R. P. Anand, President, ISIL, in his welcome address, narrated the purpose and the importance of the course. Prof. Rahmatullah Khan, Secretary General, ISIL highlighted the significance of international Environmental Law in increased globalized society.

The substantive lectures of the Course were spread over one week. Lectures were delivered on vital and contemporary areas of international environmental law, viz., General Principles of International Environmental Law, Role of Treaties Solving Global Environmental Problems, From Stockholm Conference to Johannesburg- A



RECENT ACTIVITIES/ RECENT DEVELOPMENTS

Critical Review, the Convention on Biological Diversity, International Institutions and Environment, Liability Regimes to Protect Environment, Environmental Protection Regimes for Hazardous Substances, An Overview of Environment Protection Regimes for Oceans and Seas, Climate Change Regime, Post-Kyoto Policy Architecture on Climate Change, Principles of Sustainable Development, Access and Benefit Sharing in the Nagoya Protocol, Biotechnology Biosafety and Law, Environment Protection Act, 1986, Air Act 1981 & Water Act 1974, Issues in Transfer of Technology, Impact of General Principles of International Environmental Law on India. The resource persons who took classes on the above mentioned topics are the following: Prof. R. P. Anand, Dr. Luther Rangreji, Dr. Ravindra Pratap, Meen Panikcker, L. Pushpa Kumar, Shiju M. V., Shikhar Ranjan, Dr. Anwar Sadat, Admiral O. P. Sharma, Shri Sanjay Parikh and Prof. Philip Cullet. Panel discussion "Who is more responsible for the protection of local and global environmental problems – Individual or State?" was also organized on the last day of the Course. It was chaired by Prof. Rahmatullah Khan, Secretary General, ISIL. The other panelists were Dr. Luther Rangreji, Dr. Anwar Sadat and L. Pushpa Kumar. The Course witnessed lively interactions and discussion with the participants.

RECENT DEVELOPMENT

TREATY ON ENFORCED DISAPPEARANCE ENTERED INTO FORCE

A landmark treaty to deter enforced disappearances entered into force on 23 December 2010 after ratification from Iraq. The International Convention for the Protection of All Persons from Enforced Disappearance, which was adopted by the General Assembly in 2006, took effect 30 days after Iraq became the 20th State to ratify it. Enforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by the agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State. The Convention, which has 45 articles, outlaws enforced disappearance without exception. Article 1 states that: "No

exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance." The Convention recognizes the right of all the persons affected by enforced disappearance to know the truth about the circumstances of this crime, the progress and results of the investigation and the fate of the disappeared person. States that ratify the Convention commit themselves to conduct investigations to locate the disappeared person, to prosecute those responsible and to ensure reparations for survivors and their families. States should also accept the competence of the Committee on Enforced Disappearances to receive and consider individual and inter-State communications of the Convention, when ratifying it. The Committee on Enforced Disappearances will monitor how States abide by their obligations under the Convention. The independent and impartial panel will have the power to receive complaints from or on behalf of victims when the national authorities fail to fulfil their obligations. In addition to the 20 States – Albania, Argentina, Bolivia, Burkina Faso, Chile, Cuba, Ecuador, France, Germany, Honduras, Iraq, Japan, Kazakhstan, Mali, Mexico, Nigeria, Paraguay, Senegal, Spain and Uruguay – a further 70 States have taken the preliminary step of signing it, an expression of their intention to ratify it at some point in the future.

SECURITY COUNCIL SETS UP NEW BODY TO FINISH WORK OF UN WAR CRIMES TRIBUNALS

The Security Council, on 22 December 2010, set up a new body to finish the remaining tasks of the United Nations war crimes tribunals for the former Yugoslavia and Rwanda, while calling on the courts to conclude their work by the end of 2014. By a vote of 14 in favour, with one abstention (Russia), the Council established the International Residual Mechanism for Criminal Tribunals with two branches. The Mechanism's branch for the International Criminal Tribunal for Rwanda (ICTR) will start functioning on 1 July 2012, while the branch for the International Criminal Tribunal for the former Yugoslavia (ICTY) will commence on 1 July 2013. To ensure a smooth transition to the Mechanism, the Council requested both tribunals to take "all possible measures" to expeditiously complete all their remaining work by no later than 31 December 2014. Under the so-

called "completion strategy," the tribunals were supposed to complete investigations by the end of 2004, all trial activities at first instance by the end of 2008, and all work in 2010. The Russian representative, while abstaining during the vote, said that it believed the tribunals had "every opportunity" to complete their work by the dates that had been previously agreed. Since its inception 17 years ago, the ICTY, which is based in The Hague, has indicted 161 persons for war crimes committed on the territory of the former Yugoslavia. The proceedings against 125 individuals have been completed, with only two indictees remaining at large – Ratko Mladic and Goran Hadzic. Meanwhile, 10 fugitives wanted by the ICTR, which was created in 1994 in the wake of the Rwandan genocide and located in Arusha, Tanzania, still remain at large.

ICC PROSECUTOR REQUESTS SUMMONS AGAINST SIX KENYANS ON POST-ELECTION VIOLENCE

The chief prosecutor of the International Criminal Court (ICC), on 15 December 2010, requested that the tribunal issue summons against six Kenyan citizens for alleged crimes committed during the violence that erupted following the country's general elections in December 2007. The prosecutor said that more than 1,100 people were killed, 3,500 injured and up to 600,000 forcibly displaced during 30 days of violence. There were hundreds of rapes and over 100,000 properties were destroyed in six of Kenya's eight provinces. Those named by Mr. Moreno-Ocampo are: William Samoei Ruto, the Minister of Higher Education, Science and Technology; Henry Kiprono Kosgey, the Minister of Industrialization; Joshua Arap Sang, the Head of Operations for KASS FM radio station; Francis Kirimi Muthaura, the Head of the Public Service and Secretary to the Cabinet; Uhuru Muigai Kenyatta, the Deputy Prime Minister and Minister of Finance; and Mohamed Hussein Ali, the Police Commissioner at the time of the violence. The judges of the ICC's Pre-Trial Chamber II will now review the evidence. If they determine that there are reasonable grounds to believe that the six persons named committed the alleged crimes, they will decide on the most appropriate way to ensure their appearance in Court. The prosecution has requested "Summonses to Appear."

EXTENSIONS GRANTED TO JUDGES SERVING ON UN WAR CRIMES TRIBUNALS

The Security Council, on 14 December 2010, extended the terms of several judges serving on the United Nations tribunals working to bring to justice the perpetrators of the worst crimes committed during the Balkans conflict of the 1990s and the 1994 genocide in Rwanda so that they can complete the cases on which they are working. The Council took that action in two separate resolutions, one on the International Criminal Tribunal for the former Yugoslavia (ICTY) and the other on the International Criminal Tribunal for Rwanda (ICTR), both of which were adopted unanimously. In doing so, the 15-member body took note of the assessments by both courts that they will not be able to complete all their work in 2010, as had been expected under their respective Completion Strategies.

EUROPE-INDIA TRADE PACT THREATENS MEDICINES FOR MILLIONS OF POOR – UN EXPERT

A draft free trade agreement between the European Union (EU) and India could deprive millions of people in the developing world of life-saving and life-prolonging medicines, particularly the HIV-infected, an independent United Nations human rights expert Mr. Anand Grover warned, on 10 December 2010, calling for its urgent revision. “The EU-India draft FTA, as it stands, places trade interests over human rights,” UN Special Rapporteur on the right to health, Anand Grover, said in a news release. “Millions in the developing world depend on India for generic medicines at affordable costs. Restriction of generic drug production in India will have a devastating public health impact around the world and adversely affect the right to health of millions of patients.” He notes that India can now provide low-cost generic medicines thanks to its intellectual property laws that allow for local generic production of safe and efficacious medicines, but available leaked texts of the draft FTA contain intellectual property provisions that go beyond current obligations. “If the intellectual property provisions remain in the FTA as drafted, the production of generic medicines in India will be severely hampered,” Mr. Grover said. “As a result, millions of people in India and around the

world may not be able to access to necessary, life-saving and life-prolonging medicines.

The draft also calls for stronger intellectual property enforcement and border control measures. Border seizures of non-infringing goods in Europe over the past few years have demonstrated how such provisions have delayed access to medicines for patients in other developing countries. Furthermore, the draft contains ‘investment provisions’ that would effectively result in a State’s having to pay compensation for expropriation of property, where it has used such legal steps as compulsory licensing. Such provisions would obviously deter a State from using increasing access to medicines.

The UN Committee on Economic, Cultural, and Social Rights stresses that States Parties must respect the enjoyment of the right to health in other countries, and take steps to ensure that international agreements do not infringe or adversely impact on the right to health. Mr. Grover, who reports to the Geneva-based UN Human Rights Council, said the draft therefore may not be in compliance with this stipulation and other international instruments on the right to health. “Provisions pertaining to intellectual property in the draft FTA should be urgently reconsidered,” he urged.

ICC REQUESTS CENTRAL AFRICAN REPUBLIC TO ARREST SUDAN'S PRESIDENT ON VISIT

The International Criminal Court (ICC), on 1 December 2010, requested the Central African Republic (CAR) to take all necessary measures to arrest the President of Sudan, Omar al-Bashir, and transfer him to the Court, in the event that he arrives in the country. The ICC in July 2010 issued a second arrest warrant for Mr. al-Bashir, adding genocide to the list of charges for crimes he has allegedly committed in Sudan’s war-ravaged Darfur region. In March 2009, the Sudanese leader became the first sitting head of State to be indicted by the Court, which charged him with two counts of war crimes and five counts of crimes against humanity.

The UN estimates that 300,000 people have been killed and another 2.7 million forced to flee from their homes since fighting erupted in 2003 in Darfur, pitting rebels against Government forces and allied Janjaweed

militiamen. All sides are accused of serious human rights violations. In May 2010, the ICC’s judges referred Sudan’s lack of cooperation in failing to arrest Mr. al-Bashir and the other indictees – including Ahmad Harun, a former national government minister of the interior – to the Security Council. Although Sudan is not a party to the Rome Statute, it is obliged to “cooperate fully with and provide any necessary assistance to the Court and the prosecutor” in accordance with a Council resolution adopted in 2005.

UN CLIMATE CHANGE IN CANCÚN

The United Nations Climate Change Conference opened, on 29 November 2010 at Cancún, Mexico, with the state official on the issue calling for a balanced and concrete outcome to meet one of today’s biggest challenges. The meeting is taking place just days after the UN World Meteorological Organization (WMO) found that concentrations of greenhouse gases in the atmosphere have now reached to their highest level since pre-industrial times.

FIJI BECOMES 150TH NATION TO RATIFY UN ANTI-DOPING TREATY

Fiji, on 17 November 2010, has ratified the United Nations treaty against the practice of doping in sports. It brings the number of States Parties to the first legal instrument that imposes uniform rules, tests and sanctions against the scourge to 150. The International Convention Against Doping in Sport, which promotes no-advance-notice, out-of-competition and in-competition testing, was adopted unanimously by the General Conference of the UN Educational, Scientific and Cultural Organization (UNESCO) in October 2005. The treaty is designed to ensure a consistent approach to anti-doping efforts and compel governments into action to restrict the supply of performance-enhancing substances and methods, curtail trafficking and regulate dietary and nutritional supplements.

LATIN AMERICA'S DECLARATION ON REFUGEE PROTECTION

The “Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas” was adopted on 12 November 2010 at Brasilia by the 18 South American

States to protect refugees, the displaced and stateless persons in the Latin America's region. The three important elements of the declaration are: respect for the principle of non-refoulement, including non-rejection at borders and non-penalization of illegal entry; support for the incorporation of gender, age and diversity considerations into national laws on refugees and the displaced; and the encouragement of States to adopt mechanisms to address new situations of displacement not foreseen by the 1951 Refugee Convention, the key legal document in defining who is a refugee, their rights and the legal obligations of States. The Brasilia Declaration was adopted by Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela. The United States and Canada participated in the meeting as observers.

NAGOYA PROTOCOL ON SHARING BENEFITS OF WORLD'S GENETIC WEALTH

On 29 October 2010, the Nagoya Protocol to the UN Convention on Biological Diversity (CBD) was adopted by the 193 States Parties of the CBD, which "provides an innovative approach to conserving and protecting the world's rapidly diminishing living resources, while providing benefits to all, in particular, local communities in developing countries". The Protocol sets up an International Regime on Access and Benefit Sharing of Genetic Resources and will lay down the basic ground rules on how nations cooperate in obtaining genetic resources. The Nagoya Protocol will outline how benefits – for example, when a plant's genetics are turned into a commercial product, such as a pharmaceutical – will be shared with countries and communities who conserved and managed those resources, in some cases for millennia. It also lays out rules on how substances and compounds derived from genetic resources will be managed and clarifies important issues related to pathogens, including how developed countries could obtain a flu virus to develop a vaccine in order to stave off an epidemic. In Nagoya, governments also adopted a new strategic plan, including targets for addressing biodiversity loss to be met by 2020. Countries agreed to increase land-based protected areas and national parks to 17 per cent of the Earth's surface from 12.5 per cent now, and to raise the percentage of marine protected areas from

1 per cent currently to 10 per cent. The plan also calls for lifting the extinction risk from known threatened species by 2020.

EIGHTEEN COUNTRIES ELECTED TO SERVE ON UN ECONOMIC AND SOCIAL COUNCIL

The General Assembly, on 25 October 2010, elected 18 members to the UN Economic and Social Council (ECOSOC) entrusted with discussing international economic and social progress. Australia, Cameroon, China, Ecuador, Finland, Gabon, Hungary, Latvia, Malawi, Mexico, Nicaragua, Norway, Pakistan, Qatar, Republic of Korea, Russia, Senegal and the United Kingdom were elected, and in some cases re-elected, to serve on the Economic and Social Council (ECOSOC). The ECOSOC, comprising 54 members elected by the General Assembly, meets yearly to further economic and social cooperation and development. Those elected, on 25 October 2010, will begin their three-year term on 1 January 2011. The other current members of the ECOSOC are Argentina, Bahamas, Bangladesh, Belgium, Canada, Chile, Comoros, Côte d'Ivoire, Egypt, Estonia, France, Germany, Ghana, Guatemala, Guinea-Bissau, India, Iraq, Italy, Japan, Malta, Mauritius, Mongolia, Morocco, Namibia, Peru, the Philippines, Rwanda, Saint Kitts and Nevis, Saudi Arabia, Slovakia, Spain, Switzerland, Ukraine, United States, Venezuela and Zambia.

ICC CONFIRMS WAR CRIMES CASE AGAINST FORMER DEMOCRATIC REPUBLIC CONGO LEADER

The International Criminal Court (ICC), on 19 October 2010, confirmed the case against Jean-Pierre Bemba Gombo, former DR Congo Vice-President, charged with war crimes allegedly committed in the neighbouring Central African Republic (CAR), including rape, murder and pillaging. In February 2010, Jean-Pierre Bemba Gombo's defence team challenged the admissibility of the case against him on the grounds of respecting the complementarity between the ICC's work and that of authorities in the CAR, arguing that he should not be tried before the Court. The Court's appeals chamber, on 19 October 2010, confirmed an earlier trial chamber's dismissal of an appeal by Jean-Pierre Bemba Gombo. The appeals chamber ruled

that the CAR courts' decisions were not "a decision not to prosecute" under the ICC terms, since they ruled that the case should be referred by the CAR authorities to the ICC. In 2009, the ICC's pre-trial chamber confirmed that Mr. Bemba had the "necessary criminal intent" when in 2002 he ordered his armed group, the Mouvement de libération du Congo (MLC), into the CAR to back up embattled leader Ange-Félix Patassé. It said that the MLC fighters committed war crimes and crimes against humanity during the mission, with Mr. Bemba "effectively acting as military commander." He was transferred to the ICC in July 2008 after being arrested by the Belgian police.

MOLDOVA BECOMES LATEST STATE PARTY TO INTERNATIONAL CRIMINAL COURT

Moldova became the 114 states to ratify the treaty establishing the International Criminal Court (ICC), which is tasked with trying people accused of genocide, crimes against humanity and war crimes. The country ratified the 1998 Rome Statute, on 14 October 2010, bringing the total number of States parties to 114. The treaty will enter into force for Moldova on 1 January 2011.

CASE CONCERNING AHMADOU SADIO DIALLO (REPUBLIC OF GUINEA V. DEMOCRATIC REPUBLIC OF THE CONGO)

Mr. Ahmadou Sadio Diallo, a Guinean citizen, settled in the DRC in 1964. There, in 1974, he founded an import-export company, Africom-Zaire, a société privée à responsabilité limitée (private limited liability company, hereinafter "SPRL") incorporated under Zairean law. In 1979 Mr. Diallo took part, as gérant (manager) of Africom-Zaire, in the founding of a Zairean SPRL specializing in the containerized transport of goods, Africontainers-Zaire and Mr. Diallo became its gérant. At the end of the 1980s, Africom-Zaire and Africontainers-Zaire, acting through their gérant, Mr. Diallo, instituted proceedings against their business partners in an attempt to recover various debts. On 25 January 1988, Mr. Diallo was arrested and imprisoned. On 28 January 1989, the public prosecutor in Kinshasa ordered the release of Mr. Diallo after the case was closed for "inexpediency of prosecution". On 31 October 1995, the Zairean Prime Minister issued an expulsion

decree against Mr. Diallo. On 5 November 1995, Mr. Diallo was arrested and placed in detention with a view to his expulsion. After having been released and rearrested, he was finally expelled from Congolese territory on 31 January 1996. The ICJ earlier in its Judgment of 24 May 2007 held the Application of the Republic of Guinea to be admissible "in so far as it concerns protection of Mr. Diallo's rights as an individual" and "in so far as it concerns protection of [his] direct rights as associé in Africom-Zaire and Africontainers-Zaire".

The ICJ now considered the questions of the protection of Mr. Diallo's rights as an individual and of the protection of his direct rights as associé in Africom-Zaire and Africontainers-Zaire. Guinea submitted that Mr. Diallo was the victim in 1995-1996 of arrest, detention and expulsion measures also in violation of international law. Guinea reasoned from this that it was entitled to exercise diplomatic protection of its national in this connection.

Guinea, mainly argued, *first*, the expulsion of Mr. Diallo was said to have breached Article 13 of the International Covenant on Civil and Political Rights ("Covenant"), to which Guinea and the DRC were parties, as well as Article 12, paragraph 4, of the African Charter on Human and Peoples' Rights ("African Charter") 1981, which entered into force for Guinea on 21 October 1986, and for the DRC on 28 October 1987. *Second*, Mr. Diallo's arrest and detention are said to have violated Article 9, paragraphs 1 and 2, of the Covenant, and Article 6 of the African Charter. *Third*, Mr. Diallo is said to have suffered conditions in detention comparable to forms of inhuman or degrading treatment that are prohibited by international law. *Fourth* and last, Mr. Diallo is said not to have been informed, when he was arrested, of his right to request consular assistance from his country, in violation of Article 36 (1) (b) of the Vienna Convention on Consular Relations of 24 April 1963.

It follows from the terms of the two provisions cited above that the expulsion of an alien lawfully in the territory of a State which is a party to these instruments can only be compatible with the international obligations of that State if it is decided in accordance with "the law", in other words the domestic law applicable in that respect. Compliance with international law is to some extent dependent here on compliance with internal law.

The Court after considering the facts of the case held that expulsion decree did not

comply with the provisions of Congolese law. The Court concluded that in two important respects, concerning procedural guarantees conferred on aliens by Congolese law and aimed at protecting the persons in question against the risk of arbitrary treatment, the expulsion of Mr. Diallo was not decided "in accordance with law". The Court thus found that Mr. Diallo's arrest and detention were arbitrary within the meaning of Article 9(1) of the Covenant and Article 6 of the African Charter.

Africom-Zaire and Africontainers-Zaire are two corporate entities incorporated under the Zairean law in the form of sociétés privées à responsabilité limitée (SPRLs). Guinea contended that the DRC had breached its international obligations by: "depriving Mr. Diallo of the exercise of his rights of ownership, oversight and management in respect of the companies which he founded in the DRC and in which he was the sole associé; by preventing him in that capacity from pursuing recovery of the numerous debts owed to the said companies both by the DRC itself and by other contractual partners; and by expropriating de facto Mr. Diallo's property". The Court concluded that, notwithstanding the fact that Mr. Diallo may have become its sole associé, Africom-Zaire kept its distinct legal personality. The SPRL thus remained governed by the 1887 Decree, in the absence of Congolese legislation specifically regulating companies whose parts sociales are owned by a single associé, or which, de facto, are fully controlled by the gérant associé. The Court also concluded that since Mr. Diallo was fully in charge and in control of Africom-Zaire, he was also, directly or indirectly, fully in charge and in control of Africontainers-Zaire.

After reaching the conclusion that Mr. Diallo was, both as gérant and associé of the two companies, fully in charge and in control of them, but that they nevertheless remained legal entities distinct from him, the Court next addressed the various claims of Guinea pertaining to the direct rights of Mr. Diallo as associé.

Guinea's claim relating to Mr. Diallo's direct rights as associé pertained to the right to participate and vote in general meetings of the two SPRLs, the right to appoint a gérant, and the right to oversee and monitor the management of the companies. Guinea also presented a claim in relation to the right to property concerning Mr. Diallo's parts sociales in Africom-Zaire and Africontainers-Zaire.

A. The right to take part and vote in general meetings- The Court noted that no evidence was provided that Mr. Diallo would have been precluded from taking any action to convene general meetings from abroad, either as gérant or as associé. In the opinion of the Court, the primary purpose of the provisions was to ensure that the general meetings of companies can take place effectively. Also in respect of the two SPRLs, the Court was not satisfied that the appointment of a representative by Mr. Diallo could in any way have breached in practical terms his right to take part and vote in general meetings of the two SPRLs, since he had complete control over them. Thus the Court could not sustain Guinea's claim that the DRC has violated Mr. Diallo's right to take part and vote in general meetings.

The Court also concluded that there was no violation of Mr. Diallo's right to be appointed gérant. In fact even after Mr. Diallo's expulsion, representatives of Africontainers-Zaire had continued to act on behalf of the company in the DRC and to negotiate contractual claims with the Gécamines company. The Court accordingly concluded that Guinea's claim that the DRC has violated a right of Mr. Diallo to exercise his functions as gérant must fail.

The right to oversee and monitor the management- The Court next considered that, even if a right to oversee and monitor the management exist in companies where only one associé is fully in charge and in control, Mr. Diallo could not have been deprived of the right to oversee and monitor the gérance of the two companies. While it may have been the case that Mr. Diallo's detentions and expulsion from the DRC rendered the business activity of the companies more difficult, they simply could not have interfered with his ability to oversee and monitor the gérance, wherever he may have been. Accordingly, the Court concluded that Guinea's claim that the DRC has violated Mr. Diallo's right to oversee and monitor the management fail.

The right to property of Mr. Diallo over his parts sociales in Africom-Zaire and Africontainers-Zaire-

The Court observed that international law has repeatedly acknowledged the principle of domestic law that a company has a legal personality distinct from that of its shareholders. Therefore, the rights and assets of a company must be distinguished from the rights and assets of an associé. It also rejected Guinea's argument that the property of the corporation merges with the

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property of the shareholder. Mr. Diallo's other direct rights, in respect of his parts sociales, must be clearly distinguished from the rights of the SPRLs, in particular in respect of the property rights belonging to the companies. The Court thus concluded that Guinea's allegations of infringement of Mr. Diallo's right to property over his parts sociales in Africom-Zaire and Africontainers-Zaire had not been established.

Finally on the issue of Reparation the Court opined that the Parties should engage in negotiation in order to agree on the amount of compensation to be paid by the DRC to Guinea for the injury flowing from the wrongful detentions and expulsion of Mr. Diallo in 1995-1996, including the resulting loss of his personal belongings.

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FORTHCOMING EVENTS

1. Condolence Meeting on the sad demise of Prof. R. P. Anand, President, ISIL, 7 February 2011
2. ISIL and ICRC, New Delhi Jointly Organising a Discussion on "Customary International Humanitarian Law: Update on India's State Practice", 30 March 2011 at 5.00 pm at ISIL premises
3. Workshop on "India, the 123 Agreement, and Nuclear Energy: Issues of International Law", 2 April 2011.
4. Annual Conference of ISIL, 16 and 17 April 2011

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Civil Liability for Nuclear Damage Act 2010

Guidelines for Implementation of Arrangements for Cooperation Concerning Peaceful Use of Atomic Energy with Other Countries June 4, 2010

Wetlands (Conservation and Management) Rules 2010

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Edmund Heward, Lord Mansfield, *A Biography of William Murray 1st Earl of Mansfield 1705-1793 Lord Chief Justice 32 Years*

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G. S. Sachdeva, *Outer Space: Security and Legal Challenges*

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New Acquisitions to the ISIL Library from October to December 2010