ILS CENTRE FOR INTERNATIONAL LAW

# NEWSLETTER

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# STRIKE ONE FOR LABOUR RIGHTS

## Why the ICJ's Opinion Matters

***~Shreya Patni***

Shreya Paatni graduated from ILS Law College, Pune, in 2024 and is currently working as a Legal Associate. She specializes in labour and employment law and contributes to matters involving compliance, advisory, and dispute resolution.

The right to strike is inalienable from the freedom of association promulgated primarily by the International Labour Organisation (ILO). Unlike other United Nations (UN) agencies, the ILO has a tripartite structure, with each of its 187 member states represented by the government, employers, and workers. Over time, various international legal sources have bolstered the international right to strike, but the most convincing of all is ILO Convention 87 as reinforced by applications under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Even though the right to strike is not explicitly stated, these instruments recognize workers' and employers' rights to organize activities and defend their interests. Basis this, the ILO's Committees on Freedom of Association and Committee of Experts on the Application of Conventions and Recommendations have consistently affirmed the right to strike to be a fundamental right. Moreover, the right to strike is also recognized as customary international law.

Seemingly a settled principle under international law, the discussions around the right to strike escalated into a contentious debate at the 101st session of the International Labour Conference in 2012, when employers' representatives dismissed the ever-standing recognition of the right by refusing to discuss cases associated with it and questioning its connection to Convention No. 87. This rejection unsettled years of consistent interpretation. After nearly a decade of pressure from workers and certain governments, the ILO, for the first time in it's history, formally requested an advisory opinion


from the International Court of Justice (ICJ) in November 2023, marking a rare historic move.

Basis the request, the ICJ passed an order organizing the proceedings following the ILO's request, calling for written statements and comments. In an unusual move, the ICJ invited contributions from six employers' and workers' organizations, in addition to states and international organizations, due to the ILO's tripartite structure. The parties are now awaiting the ICJ's advisory opinion, owing to the ILO's request for urgency.

The significance of the ICJ's opinion cannot be undermined. As per the general legal theory, the ICJ's advisory opinions are mere judicial statements around legal questions submitted by various organs of the UN and as such the opinions provided by it are not considered to be a decision within Article 59 of the ICJ Statute. Interestingly however, advisory opinions relating to the interpretation of the ILO Constitution or related conventions are binding.

This is because by joining ILO, all member states accept the binding nature of any "decision" that the ICJ would deliver in response to a request made by it under Article 37(1) of ILO's Constitution. Accordingly, ICJ will have tremendous importance since it has the ability to settle the debate once and for all.

# CEASEFIRES IN INTERNATIONAL LAW

***~Ashutosh Ghag***

Ashutosh Ghag is an emerging international law professional with a strong foundation in public international law and legal research. He has previously published work on humanitarian and international legal issues and holds a master's degree from Leiden University.

On November 27th 2024, Israel and Hezbollah, a Lebanese armed group, reached an agreement for a ceasefire to stop the ongoing conflict across the Israel-Lebanon border. The ceasefire terms, which the United States and France brokered, were seen to be an encouraging sign of peace in the region. According to the terms of the ceasefire, the State of Lebanon 'will prevent Hezbollah and all other armed groups in the territory of Lebanon from carrying out any operations against Israel' and Israel would 'not carry out any offensive military operations against Lebanese targets, including civilian, military or other state targets, in the territory of Lebanon by land, air or sea.' This is not the first ceasefire treaty brokered to establish peace between the two bodies either, as there was a SC resolution all the way back in 2006 to establish a ceasefire.

However, less than 6 months after the ceasefire, on April 4th 2025, Israel killed a commander of Hamas in an airstrike on Southern Lebanon. There have also been violations of the ceasefire since March. Prior to the November ceasefire, the two parties have also engaged in multiple cross-border skirmishes, in violation of the ceasefire of Resolution 1701. These breaches of the ceasefire led numerous people to question the validity and veracity of the ceasefire agreement, and what solutions did parties facing a breach of a ceasefire have.

> ***A ceasefire agreement generally works similarly to a clause part of a larger contract... it is legally binding on both parties under international law.***

In Non-International Armed Conflict (conflict between a State and a non-state actor or two non-state actors), a ceasefire agreement generally works similarly to a clause part of a larger contract.

Two parties agree to a cessation of hostilities and a gradual phase-out of their troops from contested regions as a stepping stone to a larger, more comprehensive peace agreement that tackles the divisive issues between them. However, this does not mean that the ceasefire agreement is not valid- like any valid clause in a contract, it is legally binding on both parties under international law.

There is, however, no fixed solution to remedy a breach of a ceasefire. Often, a ceasefire may include, within its terms, the result of breaches (such as instituting arbitration in the case of a breach). As a general rule, if an act that would normally be considered a breach has been committed by a private actor in their capacity (for example, a former IDF soldier committing a crime of murder in Lebanon), it would not qualify as a breach of the ceasefire.

When such terms are not present in the ceasefire agreement, recourse may be had to the provisions of the Vienna Convention on the Law of Treaties. If a breach of a ceasefire could be considered equivalent to the 'material breach' of a treaty, then it would empower the party who hasn't breached the ceasefire to counter with a reciprocal breach. However, such authorisations of the use of force are generally frowned upon by the international community and tribunals as a whole for being antithetical to the purpose of a ceasefire.

# DOCTRINE OF NECCESSITY

## Why the ICJ's Opinion Matters

***~Mihir Govande***

Mihir Govande is an India-qualified lawyer and LL.M. candidate in International Arbitration at the National University of Singapore. His interests lie in investment, construction, and energy disputes, and he has prior experience with litigation and treaty advisory work.

> ***"[S]tate of necessity is far too deeply rooted in the consciousness of…the international community…. If driven out of the door it would return through the window, if need be, in other forms."***
>
> **– Robert Ago**

**Backdrop**

As you read this, world is failing in its climate change commitments. International law for climate change ("ILCC") requires proactive State implementation (see here, here, and here). However, the necessary State regulatory space is often blunted by international investment treaty law ("ITL"), which grants foreign investors fair and equitable treatment and protection from indirect expropriation. This discord reflects their incongruous objectives: while ILCC advances global environmental interest, ITL prioritises investors' private economic interests.

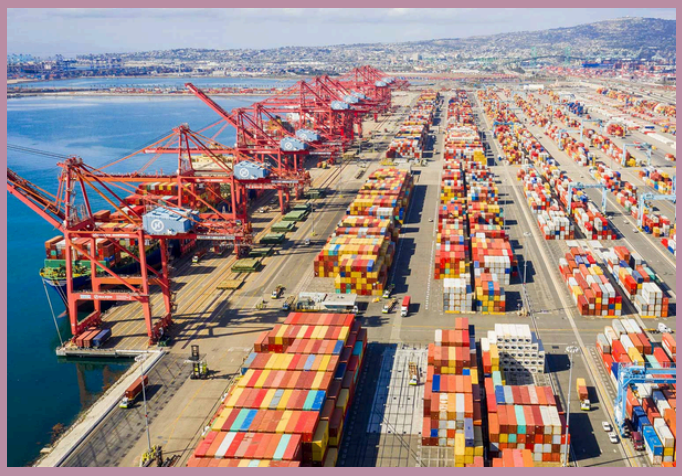
Two upcoming developments are vital for ILCC's role in ITL. First, there are forthcoming advisory opinions on State responsibility regarding climate change (see here, here and here). Second is the meltdown of the Energy Charter Treaty regime (see here and here)—driven largely by adverse arbitration outcomes which constrained European States' climate change regulations (see here and here). Presently, ILCC struggles to place itself in ITL.

**Necessity: A Defence**

The reconciliation between ILCC and ITL hasseen a potent yet underutilised emergence

of the precautionary principle (see Art. 3, UNFCCC). Broadly speaking, it obligates States to prevent actions under their jurisdiction causing significant environmental damage to another State (see *Pulps Mills on River Uruguay,* at [101]). Under ILCC, it obligates States to "anticipate, prevent, or minimize the causes, and mitigate the effects of climate change" despite "lack of full scientific certainty." However, international investment agreements ("**IIAs**") seldom accommodate such climate-conscious regulatory action. Consequently, Art. 25 of the ILC's Articles on State Responsibility ("**ARSIWA**") offers a doctrinal bridge (see here, pp. 80-84). It precludes liability for wrongful conduct when it is the only way to protect State's "essential interest from grave and imminent peril".

ITL jurisprudence has gradually widened the scope of "essential interest" beyond military or economic survival to include environmental, human rights, and public health concerns (see *Urbaser v. Argentina,* at [720] and *Dissenting opinion in Bear Creek v. Peru,* at [37]). Notably, in *LG&E v. Argentina (Decision on Liability),* in light of Argentinian financial crisis, the tribunal recognised threats to internal peace and ecology as a state of necessity justifying derogation of investor protections under IIA (at [251]-[257]). It clarified that during state of "necessity", State's regulatory measures do not breach international obligations (at [211], [215]-[266]). Therefore, the "necessity" defence under ITL—still intact despite annulment proceedings—is our closest surrogate to the precautionary principle under ILCC.



**Doctrine in Evolution[?]**

It bears noting that for successful invocation of necessity defence in climate change disputes two evolutions seem imperative: (a) "essential interests" under Art. 25(1)(a), ARSIWA would have to expand to include "international community interests" beyond mere State's "national interests"; and (b) such invocation would have to effectively negate overlapping IIA's operation. While present jurisprudence carries this genus, the species must evolve with time. Either way, tribunals must allow necessity defence deftly—balancing global climate change concerns with ever-precarious investor protections. With advisory opinions looming and ECT crumbling, "necessity" may soon shift from shield to spear. An arm or armament? Time will tell.

# NEWS AT A GLANCE


The Court of Justice of the European Union General Court (EUCJ)_ruled on Wednesday that the European Commission's refusal to give the New York Times access to communication exchanges between the EC President and Pfizer was incorrect. The court thereby annulled the EC's decision. The Court recognized that, although all institutional documents should, in principle, be accessible to the public, there is a presumption that certain documents may not exist if the institution asserts as much. However, this presumption can also be challenged by "relevant and consistent evidence produced by the applicant." The Court found that in this case, the New York Times was consistent and therefore "succeeded in rebutting the presumption of non-existence and of non-possession of the requested documents." For more information, view here

Major social media platforms, including TikTok, Instagram, and X are failing to adequately protect LGBTQ+ users from hate, harassment, and disinformation, according to the 2025 Social Media Safety Index released by the LGBTQ+ advocacy group GLAAD. The annual report's fifth edition, which evaluates the performance of major platforms on 14 LGBTQ-specific safety indicators and remains the most comprehensive benchmark of LGBTQ+ safety across major digital platforms, warns that platforms are not only neglecting their responsibilities but, in some cases, have actively weakened existing safety protocols. GLAAD specifically cited Meta's Instagram and Facebook, YouTube, and X for draconian policy reversals that enable the spread of anti-LGBTQ rhetoric and contribute to real-world harms. For more information, view here.

The Scottish parliament on Tuesday voted to advance a historic assisted dying bill, following a stage one debate. The bill, introduced by MSP Liam McArthur, is a historic step towards providing physician-assisted dying for terminally ill adults. The proposed bill was approved at stage one with 70 votes to 56. The Assisted Dying for Terminally Ill Adults (Scotland) Bill, initially introduced in 2024 by the Scottish Liberal Democrats, aims to allow eligible terminally ill adults in Scotland to be lawfully provided with medical assistance to end their own lives. The bill outlines the specific criteria for eligibility: a minimum age of 16, a resident in Scotland for a minimum of 12 months and registered with a general practitioner in Scotland, sufficient capacity to make and understand the decision, and the requirement to be terminally ill as defined. The proposed bill also requires two doctors to "assess a person as being eligible", and both must be "satisfied that a person is acting voluntarily, without being coerced or pressured". For more information, view here

Human Rights Watch (HRW) has urged newly-elected Pope Leo XIV to initiate an immediate review of the Vatican's 2018 agreement with the Chinese government. The Vatican-China agreement was signed between the Holy See and the People's Republic of China in 2018, aiming to bridge decades of division between state-sanctioned churches and underground Catholic communities loyal to Rome, and permitted Beijing to appoint bishops for government-approved Catholic churches. HRW has expressed concern that the agreement enables the Chinese state to further curtail religious freedom. Specifically, HRW detailed that the agreement has emboldened Chinese authorities to intensify their repression of unregistered religious groups. The Chinese Constitution nominally guarantees freedom of religion. However, in practice, all religious organizations must register with the state and adhere to official doctrines, with authorities forcing religious leaders to pledge loyalty to the Communist Part of China in recent years. For more information, view here

# UPCOMING ACTIVITIES

**Call for Papers: 2nd GNLU GCESCJ International Conference on Climate Justice and Sustainable Environment (ICCJSE)**

The Centre for Environment, Sustainability and Climate Justice established by GNLU (GCESCJ), offers to study, research, and provide expert consultation in environmental matters. The Centre aims to provide a platform and voice to all stakeholders, including people at the grassroots, the government, industries, experts and administrative authorities. The theme for Conference – "Rethinking Environmental Law and Policy: A Call for Action and Accountability in Challenging Times". For more information, view here

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**Panel Discussion on 'Bridging the Employment Gap with Effective Policy Solutions for Job Creation' at International Policy Drafting & Presentation Competition by MNLU Mumbai**

Maharashtra National Law University Mumbai is proud to announce a special offline panel discussion as a part of its prestigious International Policy Drafting & Presentation Competition 2025. This dynamic session brings together a distinguished panel of policy makers, economists, industry leaders, and public policy experts to explore innovative and practical solutions for one of today's most pressing global issues—employment generation. The theme for the conference is "Bridging the Employment Gap with Effective Policy Solutions for Job Creation" For more information, view here

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**Singapore International Arbitration Academy**

Singapore International Arbitration Academy (SIAA) is one of CIL's flagship programmes. Every year since 2012, the CIL has brought together some of the world's leading experts in international arbitration for a weeklong programme on investor-state dispute settlement designed specifically for government officials and private practitioners. SIAA is an unparalleled opportunity to meet and interact with luminaries of international arbitration, international investment law issues and develop new professional relationships. For more information, view here

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